

Sr. No.119

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

**RSA No.2503 of 2019 (O&M)
Date of Decision: 16.01.2020**

Gurmeet Singh

... Appellant

Versus

Bharpur Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashok Singla, Advocate,
for the appellant.

ARUN MONGA, J.

1. Having suffered reversal of the findings of First Appellate Court, the defendant herein is before this Court in second appeal to challenge the judgment and decree of the First Appellate Court whereby suit of the plaintiff was partly decreed with costs for recovery of a sum of Rs.85,000/- as compensation along with interest @ 7% per annum from the date of the filing of the suit till its actual realization.

2. Succinct factual matrix as adumbrated by the First Appellate Court is that suit was filed for recovery of Rs.3,00,000/- as compensation on account of injuries caused by the defendant to the plaintiff. The plaintiff and defendant are owners of the respective agriculture land, which is adjoining. A mulberry tree planted on common boundary of their land fell due to windstorm and the plaintiff told the defendant to lift the said tree and even a

Panchayat was also convened. It was decided in writing in the Panchayat that defendant shall uproot the tree failing which he would have to pay Rs.50,000/- to the plaintiff. However, 5-6 days prior to the date of incident i.e. 04.10.2011, plaintiff cut some branches of the tree and the defendant was grudgeful against him for the same. At about 7 a.m. on 04.10.2011 when the plaintiff went to his fields, the defendant was already hiding there brandishing a 'kasoli'. On seeing the plaintiff, he ran towards him and gave him 2-3 blows on his right leg. When the plaintiff raised alarm he was given another 2-3 blows on the left leg followed by another blow on the right shoulder of the plaintiff. On hearing the crying noises of the plaintiff, his sons Amrik Singh and Surjit Singh came to the spot and on seeing them, the defendant ran away from the spot along with 'Kasoli.' The sons got admitted the plaintiff in Civil Hospital from where he was referred to Rajindra Hospital, Patiala. There he underwent two surgeries and underwent treatment at his own costs having suffered fractures etc. Plaintiff is stated to have incurred expenses of Rs.1 lakh on his treatment and loss of income of Rs.2 lakhs from his agriculture produce apart from suffering the disability to work being handicapped. Criminal proceedings were also initiated vide FIR No.111 dated 04.10.2011 under Sections 323, 325 IPC.

3. On defendant's refusal to compensate the plaintiff towards his medical treatment and other loss, he filed a suit seeking damages/compensation.

4. In the written statement, the factual narrative of the

plaint has been denied by the defendant including falling of the tree or any decision taken in the Panchayat.

5. The entire occurrence of 04.10.2011 has been denied by the defendant stating that it is completely manipulated story and the plaintiff did not suffer any injuries at the hands of the defendant.

6. No replication was filed and based on the pleadings, following issues were framed:-

1. *Whether the plaintiff is entitled for recovery of Rs.3,00,000/- as compensation on account of injuries sustained by him as prayed for? OPP*

2. *Whether the suit of the plaintiff is not maintainable? OPR*

7. The parties adduced their respective evidence in support of their pleadings in order to discharge their respective onus to prove the issues, *ibid*.

8. The trial Court returned the finding that since the plaintiff failed to prove that defendant caused him injuries as a result of which he had to undergo treatment, the plaintiff is not entitled to compensation from the defendant. It relied on the judgment of the criminal court regarding the same occurrence where the learned Judicial Magistrate Ist Class, Barnala held that the allegations of the plaintiff against the defendant seem to be false and concocted and therefore the defendant was acquitted for the same this was considered to be an important piece of evidence.

9. In appeal learned Appellate Court held that though it was on the mind of the trial Court that both criminal and civil proceedings are separate proceedings and are completely independent of each other it got swayed by the acquittal of the defendant in the criminal case. The First Appellate Court observed that it is settled law that previous statement of the witness can be used for corroboration or contradiction of the witness in the subsequent proceeding only if the witness was confronted with the particular part of the statement and witness was offered an opportunity to explain the previous statement but in the present case the statement of the plaintiff made in criminal case was not put to him when he stepped in the witness box, his attention was not drawn to the relevant part. Thus his statement was wrongly relied upon by Trial Court to discard the testimony of Surjit Singh, son of the plaintiff who was also the eyewitness and came to the rescue of his father after the plaintiff raised an alarm and the defendant ran away after hitting the plaintiff.

10. The First Appellate Court also observed that copy of the MLR showed that injuries were present on plaintiff's both legs and he was medico legally examined, the duration of injuries was shown to be within six hours and weapon used is shown to be blunt. The trial Court wrongly ignored the testimony of the doctor on the ground that he has not deposed that injuries were caused to the plaintiff on 04.10.2011 as the doctor was not supposed to depose with regard to that but with regard to medico legal examination conducted by him which he had proved. The bed

head ticket showed that the plaintiff was treated for fracture of his both legs.

11. First Appellate Court further held that it was proved that defendant had caused injuries to the plaintiff and the plaintiff was treated for the fracture of both legs. Though the plaintiff had failed to connect the purchase bills of medicine with the injuries suffered by him and he also failed to prove the exact expenses incurred upon the purchase of medicines, the fact remained that plaintiff was inflicted injuries by the defendant and both his legs were fractured and he remained admitted in hospital and suffered a lot he is entitled to compensation.

12. In the aforesaid premise, the appeal was partly allowed and suit of the plaintiff was decreed to the extent of recovery of an amount of Rs.85,000/- as compensation along with costs to be paid with interest @ 7% from the date of filing a suit till realization.

13. Having heard learned counsel for the parties and on perusal of the judgments passed by the Courts below, I am in agreement with the views of the learned First Appellate Court. The findings of the Trial Court are perverse qua the evidence adduced by the plaintiff and seem to have been arrived by misconstruing the evidence. Learned First Appellate Court rightly appreciated the evidence and returned findings to the extent of holding that the plaintiff was entitled to be compensated by the defendant.

14. No interference is called for by this Court. Judgment

and decree passed by the First Appellate Court is upheld and the regular second appeal is, accordingly, dismissed.

16.01.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No