

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

RSA-882-1994 (O&M)

Date of decision: 29.04.2023

Swaran Kaur

...Appellant

Versus

Gajjan Singh and others

...Respondents

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

Present: Mr. Satyam Arora, Advocate for the appellant.

None for the respondents.

H.S. MADAAN, J.

Shortly put facts of the case are that plaintiff Sawaran Kaur widow of Bakhshish Singh had brought a suit against Gajjan Singh, Mangal Singh and Kandhara Singh seeking recovery of compensation amount to the tune of Rs.1 lakh on account of murder of her husband Bakhshish Singh by the defendants/accused.

2. As per version of the plaintiff, on 03.08.1984 at about 5.00 am while Bakhshish Singh was ploughing his land with a tractor, Gajjan Singh and Mangal Singh armed with kirpans, Kandhara Singh having a gandasa came there and stopped Bakhshish Singh from ploughing the land; Gajjan Singh gave a kirpan blow on the head of Bakhshish Singh, Mangal Singh gave a kirpan blow on the upper half

of right arm of Bakhshish Singh; resultantly, Bakhshish Singh fell down; Nirmal Singh and Dalip Singh who were cutting chari fodder nearby had also arrived at the spot inflicted injuries to Gajjan Singh and Mangal Singh to save Bakhshish Singh; Bakhshish Singh was taken to the hospital but he succumbed to the injuries on 03.08.1984; formal FIR with regard to the incident for offences under Sections 302 and 34 IPC was registered against the defendants/accused.

As the version of the plaintiff goes, Bakhshish Singh was aged about 25 years having sound health; he was engaged in avocation of agriculture and used to earn Rs.10,000/- per annum; the plaintiff was dependent upon income of the deceased; the plaintiff claimed compensation of Rs.70,000/- and Rs.30,000/- on account of loss of affection and company, total Rs.1 lakh.

3. On being put to notice, the defendants appeared and filed a written statement, contesting the suit contending that in fact Bakhshish Singh had started demolishing water channel existing in fields of Gajjan Singh; Gajjan Singh refrained him from doing so, at which Bakhshish Singh and his brothers Gurdip Singh, Nirmal Singh and Pritam Singh started inflicting injuries on the person of Mangal, Gajjan Singh and Smt. Gurmej Kaur wife of Gajjan Singh; Nirmal Singh and Gurdip Singh were armed with gandasas while Dalip Singh was having a dang; in order to save Gajjan Singh, certain injuries were caused in self-defence; it was denied that Gajjan Singh and Mangal were armed with kirpans and Kandhara Singh with a gandasa or they had attacked

Bakhshish Singh with such weapons; the defendants denied having committed murder of Bakhshish Singh; they pleaded that plaintiff had contracted a kareva marriage with Bhajan Singh, elder brother of Bakhshish Singh, therefore, she has ceased to be widow of Bakhshish Singh; the plaintiff has given birth to a female child on 12.06.1988 and thereafter came in family way again; in the end, they prayed for dismissal of the suit.

4. Plaintiff filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the defendants caused the death of Bakhshish Singh son of Chanda Singh, resident of village Karma? OPP.
2. Whether the plaintiff is entitled to recover Rs.1,00,000/- as compensation as alleged in the plaint? OPP.
3. Whether the plaintiff is entitled to interest? If so at what rate? OPP.
4. Whether the suit is within time? OPP.
5. Whether the suit is not maintainable? OPD
6. Relief

6. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

7. After hearing arguments, the trial Court of Addl. Senior Sub Judge, Ferozepur, vide judgment and decree dated 26.09.1989 gave issue wise findings observing that defendants did not cause death of Bakhshish Singh husband of the plaintiff deciding issue No.1 in

favour of the defendants and against the plaintiff; issue No.2 was decided holding that since the plaintiff has failed to prove that Bakhshish Singh was murdered by the defendants and further for the reason that she has remarried, she is not entitled to claim any compensation; verdict on issues No.3 to 5 was also give. Resultantly, suit of the plaintiff was dismissed.

8. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiff has preferred an appeal before District Judge, Ferozepur, that appeal was assigned to Addl. District Judge, Ferozepur, who vide judgment and decree dated 30.07.1993 set aside the judgment and decree passed by the trial Court drawing conclusion that the defendants had caused death of Bakhshish Singh husband of the plaintiff and the plaintiff has not contracted any marriage with Harbhajan Singh as alleged by the defendants, therefore, she is entitled to recover compensation from the defendants/respondents which was quantified as Rs.54,000/-.

9. Finding the compensation so awarded to her to be on lower side, the plaintiff has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents. The respondents had earlier put in appearance through counsel but subsequently they went unrepresented. Notice were issued to them but their service could not be procured. They had filed a cross appeal challenging the judgment and decree passed by Addl. District Judge, Ferozepur burdening them with compensation amount but on

account of non-appearance, that appeal has been dismissed for non-prosecution, vide order passed today itself.

10. I have heard learned counsel for the appellant/plaintiff besides going through the record.

11. The trial Court had obviously mis-appraised the evidence and wrongly interpreted the law while dismissing the suit of the plaintiff. The trial Court had went on to decide the matter as if it was dealing with a criminal case where onus to prove guilt of the accused beyond a shadow of reasonable doubt is on the prosecution and the benefit of doubt goes to the accused. It seems to have forgotten that it was dealing with a civil matter where the yardstick is of preponderance of probabilities. The trial Court discarded the eye witness account given by PW4 Nirmal Singh and PW2 Dalip Singh which is found to be cogent and convincing for the reason that they themselves had not received any injury on their person, such approach was not proper and appropriate. Similarly, the trial Court gave too much importance to the fact that defendants have been acquitted in the criminal case forgetting that judgment of criminal Court is not binding upon civil Court and civil Court has to reach its own conclusion. The fact remains that FIR with regard to the incident was registered against the defendants and they had faced trial, although they might have earned acquittal therein. As mentioned supra, the yardstick for a decision of a criminal case is quite different from that of a civil matter, rather, it is more rigorous and that very yardstick was applied for deciding that civil case. The verdict

given by the trial Court that defendants did not cause death of Bakhshish Singh was obviously wrong and has rightly been set aside by learned Addl. District Judge, Ferozepur in first appeal.

12. Similarly, the verdict with regard to issue No.2 that plaintiff is not entitled to get any compensation from the defendants is both factually and legally wrong. The judgment passed by Addl. District Judge, Ferozepur setting aside the judgment and decree passed by the trial Court is based upon proper analysis and appreciation of evidence and correct interpretation of law.

13. However, with regard to quantum of compensation, learned Addl. District Judge, Ferozepur has given less compensation than what should have been granted to the plaintiff. Bakhshish Singh was considered an agricultural labourer, though in para No.7 of the judgment, it is mentioned that it is proved that Bakhshish Singh was in possession of some land, it was not proper to treat him as an agricultural labourer and take his daily income to be Rs. 15 to 20. Similarly, observation made that he must be spending 50% of income towards his own needs is not justified. The dependency of plaintiff has been taken to be Rs.300/- per month i.e. Rs.3600/- per annum. Bakhshish Singh is found to be aged about 25 years at the time of his death. The Ist Appellate Court has used multiplier of 15. However, taking guidance from the law with regard to grant of compensation in case of road side accidents, when the deceased is in the age group of 15 to 25, then multiplier of 18 is to be applied. If it is so done, the

compensation comes out to Rs.64,800/- No compensation has been awarded to the plaintiff who has lost her husband on account of loss of consortium, pain and suffering and other usual heads. Under the circumstances, I find that the compensation awarded deserves to be enhanced to Rs.1 lakh. Therefore, the Regular Second Appeal is accepted; judgment passed by learned Addl. District Judge, Ferozepur is modified to the extent that instead of compensation of Rs.54,000/- awarded to the plaintiff, the same is enhanced to Rs.1 lakh, payable by all the three defendants/respondents jointly and severally with costs throughout.

29.04.2023
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(H.S. MADAAN)
JUDGE

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