

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

**RSA-2965-2015 (O&M)
Date of decision: 01.05.2023**

SANT MASIH THROUGH HIS LR BALKAR MASIHAppellant
VS

ASHOK MAHAJAN ...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Satvir Singh, Advocate for
Mr. A.S.Manaise, Advocate
For the appellant.

Ms.Himani Kapila, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

CM-7128-C-2015

Application herein is under Order 44 Rules 1 and 3 CPC seeking permission to file the accompanied appeal as an indigent person. For the reasons stated in application, same is allowed, as prayed for.

Main case

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 31.07.2012, as upheld by learned First Appellate Court vide its judgment and decree dated 30.09.2014, dismissing the suit of plaintiff for recovery of Rs.15,00,000/- as damages along with interest.

3. Briefly stated, facts as noticed by Courts below are as under:

“...Plaintiff Sant Masih alleged in the plaint that he at the age of 60 years, was physically fit. He used to run a "Rerha" and was also running a dairy farm, from which he used to earn Rs. 500/600/- per day. That on 30th/31th July 2005, due to shoe pinching, he suffered an injury/wound on the thumb of his right foot. He visited doctor Ashok Mahajan defendant for treatment on 02.08.2005 and he remained under treatment of said doctor up to 16.01.2006. It is further averred that because of negligence of defendant Dr. Ashok Mahajan, said injury of the plaintiff was not cured, as a result of which gangrene had developed in his right foot and leg. For concealing his negligence and for getting rid of the plaintiff, the defendant referred him to Dr. H.S. Bajwa (Ortho) Gurdaspur on 16.01.2006, for treatment. When the plaintiff visited Dr. Bajwa, he advised the plaintiff to get his leg x-rayed and undergo some other tests. He further advised him to come after arranging money. In view of the said advice of the doctor, the plaintiff was admitted in Bajwa Hospital, where his right leg was amputated on 29.01.2006. Plaintiff was discharged from the said Hospital on 13.02.2006 and is still under his treatment. It is further averred that due to wrong, negligent and improper treatment of the plaintiff done by the defendant, the plaintiff has lost his right leg. That the plaintiff spent Rs. 50,000/- on his treatment, at the hands of defendant. Apart from that, he has also spent Rs. 60,000/- on his treatment in the hospital of doctor Bajwa. That he is still under his treatment. It is further averred that because of amputation of his leg, the plaintiff has suffered mentally, physically and financially. Now, he is handicapped person and unfit to do any work. He has also lost his livelihood, as now he cannot run "Rehra" and dairy farm. That he has suffered all this, because of his negligent medical treatment done by defendant. He made requests to defendant to compensate him, but the defendant refused to do so. Hence this suit claiming compensation/damages from the defendant to the tune of Rs. 15 lacs.”

4. Upon notice, defendant appeared and filed written statement taking preliminary objections on the grounds of maintainability and non-joinder of necessary party etc.

4.1 On merits, it was pleaded that plaintiff was never a patient of defendant, so question of any negligence on the part of answering defendant did not arise. It was stated that possibly plaintiff would have visited as an

outdoor patient and, per his ailment, might have been referred to some other hospital. But there was no medical treatment meted out by the defendant. Plaintiff had thus no right to claim any compensation from the defendant. All other averments were also denied.

5. Replication was filed. Based on rival pleadings, following issues were framed:

1. *Whether the plaintiff is entitled for recovery of Rs.15,00,000/- as prayed for? OPP*
2. *Whether the plaintiff has not come to court with clean hands and has concealed true facts of the case?OPD*
3. *Whether the present suit is not maintainable? OPD*
4. *Whether the suit is bad for non-joining of necessary parties ?OPD*
5. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided in favour of defendant and issues No.2 to 4 were decided against the defendant and in favour of plaintiff. Consequently, suit of plaintiff was dismissed by learned trial Court vide impugned judgment and decree dated 31.07.2012.

8. Feeling aggrieved, plaintiff went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

9. Learned counsel appearing for appellant would canvass that learned Courts below ignored the documentary evidence to viz., record of OPD (Ex.PA), admission slips (Ex.PB and Ex.PC) and laboratory reports Ex.PG, PJ, PL and PM by observing that same have not been proved as per

law and cannot be read in evidence, whereas documents Ex.PA to Ex.PC have been issued by PW3 Dr. Hardeep Singh Bajwa (Ortho). Hence these documents were duly proved on record as per law by the person who had issued the same. Similarly, laboratory reports (Ex.PG, PJ, PL and PM) were issued by laboratory of hospital of defendant. When defendant Dr. Ashok Mahajan (DW1) was cross-examined by learned counsel for plaintiff, he admitted these laboratory reports to be correct.

9.1 Learned counsel appearing on behalf of appellant further submits that on 16.01,2006, when defendant referred plaintiff to Dr. H.S. Bajwa, plaintiff was already suffering from Gangrene on his foot, but same was deliberately not disclosed by defendant being an outcome of his own negligence

10. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“XXX XXX XXX

Perusal of lower court record shows that originally suit was filed by Sant Masih himself and he died during its pendency. His son Balkar Masih was brought on record as his legal representative. Thereafter, Balkar Masih pursued the suit and this appeal has also been preferred by him, which has been hotly contested by respondent/defendant Dr. Ashok Mahajan.

10. *Main issue in this case is as to whether respondent Dr. Ashok Mahajan was negligent in conducting medical treatment of Sant Masih and further as to whether due to negligent treatment, gangrene had developed in right leg and foot of Sant Masih, as a result of which his said leg had to be amputated? Admittedly Sant Masih himself had died prior to stepping into the witness box. However, his son Balkar Masih came on record as his LRand he stepped into the witness box as PW4. He has also examined PW1 Yakub Masih, PW2 Kewal Masih and PW3 Dr. Hardeep Singh Bajwa. He has placed on record documents, pertaining to the treatment of Sant Masih Ex-PA to Ex-PM. From the perusal of these documents, ld.counsel for appellant could not show on record as to how wrong medical treatment of Sant Masih was done by respondent Dr. Ashok Mahajan. Very important witness in the*

case in hand was PW3 Dr. Hardeep Singh Bajwa, who treated Sant Masih for the last time. Cross-examination of this witness is very important and it would clinch of whole issue. He has specifically stated in the opening lines of his cross-examination that Sant Masih patient did not produce any record of his treatment before him, relating to his injury, from any other doctor. He further stated that Sant Masih did not disclose any such treatment from any doctor, when he visited hospital of PW3 Dr. Bajwa. PW3 specifically stated in his cross-examination that from the examination of Sant Masih, when he came in the hospital of this witness, PW3 could not find out any kind of negligence of any doctor qua treatment of this patient. Apart from that, there is only oral evidence of other witnesses examined by appellant. PW1 Yakub Masih has stated in his cross-examination that he never accompanied Sant Masih, when he visited for his treatment in the hospital of respondent Dr. Ashok Mahajan. It is further in the statement of this witness that defendant never medically treated Sant Masih in his presence. PW2 Kewal Masih has specifically stated in his cross-examination that he has no knowledge that Dr. Ashok Mahajan had not referred Sant Masih to Dr. Bajwa. PW3 Dr. Bajwa did not prove on record that the medical record produced on file, makes out any case of negligence on the part of the respondent. On the otherhand DWI Dr. Ashok Mahajan has denied all the allegations of the appellant/plaintiff. Apart from that, it was the plaintiff who was to prove the negligence of respondent with regard to treatment of Sant Masih. But he has totally failed to produce sufficient evidence, on the basis of which it could be said that wrong treatment of Sant Masih was done by respondent. Moreover, most important witness of the appellant PW3 Dr. Bajwa, did not support stand of the appellant and he specifically stated that no doctor was negligent in conducting treatment of Sant Masih. In view of all these facts and circumstances, ld. lower court has rightly recorded findings of issue no.1 against the appellant, as no case was made out for granting any relief to the appellant plaintiff. Findings qua this issue given by lower court stand affirmed. Findings of trial court qua other issues have not been challenged and they being justified and correct, also stand affirmed. Judgment/decreed under challenge have been passed by the lower court, perfectly in accordance with law. They do not call for any interference of this Appellate Court. This appeal being devoid of any merit, deserves dismissal.”

11. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons

consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12 Learned First Appellate Court observed in its judgment inter alia that as per testimony of PW3 Dr. Hardeep Singh Bajwa, any record of his treatment was not produced before him Sant Masih nor did he disclose about any such treatment from any doctor when he came to his hospital. Further, he specifically stated that from the examination of Sant Masih, he could not find any kind of negligence of any doctor qua the former's treatment. The judgment also shows that PW1 Yakub Masih never accompanied the deceased when he visited the hospital of the defendant and that PW2 Kewal Masih did not know if the deceased was referred by the defendant to Dr. Hardeep Singh Bajwa. There is nothing on record to show if PW4 Balkar Masih had any personal knowledge about the treatment taken by Sant Masih deceased from the defendant. As against this, the defendant categorically asserted that Sant Masih had never been his patient and the question of negligence in treating him did not arise; that even if possibly he had come as an outdoor patient, he might have been referred to some other hospital as per the requirement for treatment of his ailment but there had not been any kind of his treatment with the defendant.

12.1 Let us assume for a moment, without holding, that the plaintiff-appellant did remain under the treatment of the defendant. Even then, concurrent finding of fact on issue No. 1 recorded against the plaintiff by the learned courts below cannot be treated as unfounded or contrary to record or otherwise perverse to justify interference in this second appeal.

There is nothing on record either by way of testimony of the doctor who

subsequently treated the plaintiff nor any literature even relied upon to show that course of treatment given to plaintiff by the respondent was wrong or there was any negligence on his part. Nor even any medical expert was examined, who would disagree with the treatment given to plaintiff by the defendant herein.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by learned Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

01.05.2023
Vandana

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