

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****216****Date of decision: 21.11.2025****RSA-3522-2015(O&M)****1. Smt. Prem Lata****...Appellant(s)****Vs.****State of Haryana & Others****...Respondent(s)***********RSA-1456-2015(O&M)****2. State of Haryana through Collector Jind, District Jind****...Appellant(s)****Vs.****Smt. Prem Lata & Another****...Respondent(s)***********RSA-1455-2015(O&M)****3. State of Haryana through Collector Jind, District Jind****...Appellant(s)****Vs.****Smt. Prem Lata****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Mukesh Kumar Sharma, Advocate
for the appellant in RSA-3522-2015,
respondent No.1 in RSA-1456-2015, and
respondent in RSA-1455-2015.

Mr. Naveen Kumar, Addl. AG Haryana.

Mr. Jagdish Manchanda, Senior Advocate with
Mr. Saksham Kaushik, Advocate
Mr. Devyansh Arora, Advocate
for respondent-Municipal Committee.



NIDHI GUPTA, J.

RSA-3522-2015

Present second appeal has been filed by the plaintiff laying challenge to the impugned judgment and decree dated 26.07.2012 passed by Civil Judge (SD), Jind and judgment and decree dated 18.11.2014 passed by Additional District Judge, Jind, to the extent to which suit/claim of damages of plaintiff/appellant has been dismissed and appropriate damages have not been granted, and thus the claim of damages is liable to be enhanced.

RSA-1456-2015

Present second appeal has been filed by the defendant against the judgment and decree dated 18.11.2014 passed by the learned Additional District Judge, Jind in Civil Appeal No. 133 of 2014 titled as 'Prem Lata V/s State of Haryana and Others vide which the appeal of the respondent/plaintiff filed for enhancement of damages has been accepted; and the damages of ₹75,000/- awarded to the plaintiff vide judgment and decree dated 26.07.2012 passed in Civil Suit No. 47 of 2010 by the Additional Civil Judge (Senior Division), Jind have been enhanced to Rs.1,50,000/- without merit.

RSA-1455-2015

Present second appeal has been filed by the defendant against the judgment and decree dated 18.11.2014 passed by the learned District Judge, Jind in Civil Appeal No. 252 of 2014 titled as 'State of Haryana and another V/s Prem Lata' vide which the appeal of the appellants filed for



setting aside impugned judgment and decree dated 26.07.2012 passed in Civil Suit No. 47 of 2010 by Additional Civil Judge (Senior Division), Jind has been dismissed.

All the above said 3 appeals are being disposed of by this common order as they emanate from same impugned judgment and decree dated 18.11.2014 passed by learned Additional District Judge, Jind; and judgment and decree dated 26.07.2012 passed by the learned Additional Civil Judge (Senior Division), Jind; and parties, facts, and issues involved in all the 3 cases are identical. For the sake of brevity, the parties are being referred to as per their status before the learned trial Court.

2. The plaintiff had filed the instant Suit stating therein that she is owner in possession of the house as described in the plaint. It was averred that defendants No.2 and 3 had laid underground water supply and sewerage adjoining line pipes the house of the plaintiff and had also laid underground waste water supply and sewerage pipes. It was alleged that the said pipes had started leaking and seepage had entered into the foundations of the house of the plaintiff. Due to this, foundation of the house was damaged. The plaintiff had to support the roof on wooden studs to avoid any untoward incident. The condition of the house had started deteriorating in the month of October 2009. The plaintiff had made repeated applications to the defendants starting from 30.10.2009. The defendants had sent some officials to visit the spot but they had not taken



any steps to rectify the errors. A written complaint dated 01.12.2009 was given by the plaintiff to the Executive Engineer, Public Health, Jind. On this written complaint, the officials of the Department had come to the spot with some labour and had claimed to have repaired the leaking pipes and filled the dug-out portion partly. It was alleged that due to this, the house could collapse at any time. Accordingly, present Civil Suit for damages had been filed on 15.03.2010.

3. On appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Additional Civil Judge (Senior Division), Jind had partly decreed the suit of the plaintiff vide judgment and decree dated 26.07.2012 that a *“decree for recovery of amount of Rs. 75000/- is passed in favour of plaintiff against defendants No.1 and 2 for the damage caused to the house of plaintiff by negligence of the employees of defendants No.1 and 2. Hence, defendants No.1 and 2 in the interest of justice are directed by decree of mandatory injunction to pay damage of Rs.75000/- within 45 days of pronouncement of judgment and in case payment is not paid within time then plaintiff would be entitled for interest 6% per annum from date of pronouncement of judgment, over the above amount till, final payment of the decretal amount.”*

4. Against the said judgment and decree, two Civil Appeals were filed, the same being: Civil Appeal No.133 of 2014 dated 08.09.2014 titled as *“Smt. Prem Lata Vs. State of Haryana & Others”* filed by the plaintiff; and



Civil Appeal No.252 of 2014 dated 08.09.2014 filed by the defendants titled as “State of Haryana & Another Vs. Smt. Prem Lata”. Both the above-said Civil Appeals were disposed of by the learned Additional District Judge, Jind vide common judgment dated 18.11.2014 as follows:-

“19. In view of the discussion above, the judgment and decree dated 26.07.2012 passed by learned court below is modified and the appeal bearing No. 133 of 2014 filed by appellant/plaintiff Smt. Prem Lata is allowed in the terms as indicated above and the suit of appellant/plaintiff is partly decreed with costs. A decree for recovery of Rs. 1,50,000/- is passed in favour of the appellant/plaintiff and against the respondents/defendants no. 1 and 2 for the damage caused to the house of appellant/plaintiff. The respondents/defendants no. 1 and 2 are directed by decree of mandatory injunction to pay damages of Rs. 1,50,000/- to the appellant/plaintiff within two months from today and in case the payment is not made within time, then the appellant/plaintiff would be entitled for interest @ 6% per annum over the abovesaid amount from the date of pronouncement of judgment till final payment of the same. The appellant/plaintiff is also directed to make good the deficiency in court fees, if any, after calculation. Whereas the appeal bearing No. 252 of 2014 filed by the respondents/defendants is dismissed with costs. Decree sheet be drawn accordingly. Copy of this judgment be placed on the connected file of cross-appeal bearing No. 252 of 2014. File of learned court below along with copy of judgment of this court be sent back while appeal files be consigned to the record room.”



5. Hence, present Second Appeals filed by the plaintiff and the defendants.

6. It is inter alia submitted by learned counsel for the plaintiff (appellant in RSA-3522-2015), that the plaintiff had duly established on record that extensive damage had been caused to her house due to the wrongful laying of the sewerage and water pipes by the defendants, below the house of the plaintiff. It is submitted that plaintiff had produced into evidence photographs starting from Ex. P-4 to P-21, which shows the damage to the floor, walls, foundation etc. The photographs clearly show that there is massive damage to the house of the plaintiff. The plaintiff had proved on record that there is damage to the property more than Rs.4,00,000/-. Respondents cross examined plaintiff as PW-2 but failed to cross examine her on the point of loss or damage. Not even a suggestion has been given that there is no loss of Rs.4,00,000/- to the house.

7. It is further submitted that plaintiff had produced Sh. S.P. Gupta, Retd. Executive Engineer from PWD (B&R) Department and he assessed the loss to Rs.4,15,156/-. He produced his report in evidence and proved on record that there is substantial damage to the property. Respondents while cross examining Sh. S.P. Gupta as PW-1 have failed to make a suggestion that there is no loss of Rs.4,15,156/-. It is settled law that the point on which there is no cross examination, the same amounts to admission of the party.



8. Ld. Counsel further argues that the Courts below have erred while deciding issue no. 1 and 2 to assess the damage of only Rs. 1,50,000/- whereas PW-1 by proving his report Ex. P-1 has assessed the damages of Rs. 4,15,156/-. Even the Local Commissioner Sh. Dharam Pal J.E. has assessed the damages of the amount of Rs. 2,70,060/-. The Ld. District Court failed to consider the fact that the Local Commissioner Sh. Dharam Pal Singh, J. E., P. W.D. B&R, Jind was also member of the Joint Committee constituted by defendant for inspection of the spot and there was no reason and cause to disbelieve report Ex. P1 and report of Local Commissioner.

9. It is lastly contended that the Ld. courts below have failed to consider that there is no rebuttal evidence from the side of defendants to rebut the report Ex. P-1 and report of Local Commissioner and so the damage should have been assessed in view of the report Ex. P-1 and at least in view of report of Local Commissioner dt. 25.5.2010 who is a Govt. employee of Haryana State itself. Thus, Ld. Courts have erred in assessing the damage only Rs. 1,50,000/- which is very low and inadequate and so deserves to be enhanced.

10. Per contra, learned State Counsel vehemently opposes the submissions advanced on behalf of the plaintiff and submits that in passing the impugned judgments and decrees, the learned Courts below have failed to take into account the Joint Inspection Report dated 21.12.2009 (Ex.DW1/B), as per which it is reported that no sewerage line had been laid



by the defendant-Public Health Engineering Department, Jind. It is submitted that therefore, the defendants could not have been held liable to pay damages to the plaintiff. It is further submitted that the learned courts below have erred in ignoring the fact that no sewer line is existing in the street where the disputed house is located. In fact, waste water pipe of adjoining houses of plaintiff has been found laid without the approval of defendants and was not in the knowledge of the defendants, as it was maintained by the neighbor of the plaintiff, which was found leaking at the time of inspection during excavation conducted by the joint inspection committee. The waste Pipe was found laid from soakage pit to open drain maintained by Municipal Committee, Jind by the neighbours of plaintiff which was found damaged and probably is the cause of damage to the house of plaintiff. The learned trial and first appellate courts have further erred in ignoring the fact that along with the disputed house there is surface open drain which carries Waste water of nearby houses and is maintained by Municipal Corporation, Jind and the defendants are not responsible for its maintenance. PVC pipe of sub-standard material was also found laid for disposing the wastewater of nearby house which was at very shallow depth from the soakage pit of the neighbor up to surface drain passing along the house of plaintiff during inspection. Hence the damage to the building was due to seepage of waste water of private pipe line. In fact the cause of damage to the house is not the leakage in water supply pipeline rather it is



due to inferior damaged PVC pipe used for discharge of waste water by the neighbours for which the defendants were not responsible. In this way the defendants cannot be held responsible for the alleged damage to the house in question especially when the open drains are maintained by the Municipal Committee Jind/Performa respondent.

11. Learned counsel accordingly prays that RSA-3522-2015 filed by the plaintiff be dismissed; and RSA-1456-2015 and RSA-1455-2015 be allowed.

12. No other argument is made on behalf of the parties.

13. I have heard learned counsel and perused the case file in detail. I have given my thoughtful consideration to the submissions advanced on behalf of both the parties.

14. The position that emerges is that it had been alleged by the plaintiff that the leakage in the foundation of the house of the plaintiff was occurring from the underground water supply and sewerage line pipes laid down by the defendant No.2/Public Health Department, Jind. However, from the photographs relied upon by the defendants (Ex.DW3/A to Ex.DW3/L), it was evident that the leakage was not from the water supply pipeline rather it was from the PVC pipeline installed by the neighbour of the plaintiff; and it was that leakage which had caused damage to the house of the plaintiff.



15. To counter the same, the plaintiff has relied upon Expert Report (Ex.P1). However, even the said Report is insufficient as the author of the said Report Sh. S.P. Gupta, while appearing as PW1 has clearly admitted that at the time of assessment of the damage of the house of the plaintiff for preparation of the Reports (Ex.P1 and Ex.P2), he had not excavated the internal and external part of the house of the plaintiff. PW1 has further admitted that he did not even get excavated the foundation. In this circumstance, the determination made by PW1 in reporting that defendants were responsible for the leakage and the resultant damage to the house of the plaintiff, is unreliable. PW1 has also admitted in his cross-examination that in respect of the damage to the house of the plaintiff, he had enquired from people, on the basis of which, he had opined on the issue. Clearly therefore, Report (Ex.P1) could not have been relied upon.

16. It has been contended on behalf of the defendants that in holding the defendants liable for damage, the Courts below have ignored the Joint Inspection Report dated 21.12.2009 (Ex.DW1/B) (at page 131 of the LCR). The said Report reads as follows:-

“Joint inspection report of the House of Smt. Prem Lata W/o Late Sh. Shyam Sunder, R/o H. No. 244/18, Kanungo Street, near Hari Baba Hari Dass Mandir, Jind on dated 21/12/2009.

The following were present :-

1. Sh. A.K. Bishnoi, Executive Engineer, Public Health Engg. Division, Jind



2. Sh. V.S. Malik, Executive Engineer, Provincial Division (B&R),
Jind

3. Sh. A.K. Garg, S.D.E., Public Health Engg. Sub Division No. 2
Jind

4. Sh. Dharampal,, Junior Engineer, Provincial Division (B&R),
Jind

5. Sh. Ramphal, Junior Engineer, Public Health Engg. Sub Divn.
No. 2 Jind

This house is situated on mound (Dara) near Safidon Gate Jind approximately at a height of 30-35 ft. from road level at Safidon Gate Jind town. Cracks are visible in the walls of the house towards eastern side of the house. The eastern side of the house is having street about 10ft. wide. Only water supply pipeline 80mm i/d of cast iron is visible having lead jointing. There is no sewer line laid by Public Health Engineering Department Jind. Along the house there is surface drain. Waste water of nearby houses found flowing in this drain. PVC pipe of sub standard material was also found laid for disposing the waste water of the nearby houses at very low depth from a soakage pit upto surface drain. Due to damage to pipe, the flow has blocked and seepage has occurred under the house of in question. There was no other type of leakage in water supply pipeline as the pipes joints were perfect. The damage to the building is due to seepage of waste water in the foundation. As such the cracks have developed due to following reasons :-

a) The foundation of the house is on filled up ground having insufficient bearing capacity.



b) The foundation has not been designed structurally to bear the load due to any reason such as seepage/ earth quakes / vibrations.”

17. A perusal of the abovesaid Report shows that it has been categorically stated therein that no sewerage pipe has been laid down by the Public Health Department/defendant No.2; and only water supply pipeline has been laid by them which is not leaking; and the PVC pipe of substandard material for disposing waste water of nearby houses had been damaged due to which there was blockage and seepage under the house of the plaintiff. As discussed above, the said PVC pipe had been installed by neighbours of the plaintiff. Thus, from the above facts, it stands established that no damage to the house of the plaintiff had occurred due to any pipes laid down by the defendants No.1 and 2. Thus, the plaintiff could not prove actual damage to her house as alleged in the plaint and the Report (Ex.P1).

18. However, notwithstanding the above position, undisputedly, the defendants No.1 and 2 are liable for the maintenance of the water channel. It was in this background that the learned Courts below had held the defendants liable to pay damages to the plaintiff while relying upon judgment of the Hon'ble Supreme Court in **M.P. Electricity Board Vs. Shail Kumar 2002(1) Civil Court Cases 685 (SC)**. Though on the face of it, it would appear that the defendants are not liable to pay any damages, however, learned counsel for the defendants has been unable to distinguish the said judgment before this Court.



19. As regards Report dated 25.05.2010 of the Local Commissioner by ASDE Dharampal, whereby damages were assessed to the tune of Rs.2,70,060/-, could not be taken into consideration as the said Report was neither accepted by the plaintiff; nor was the Local Commissioner examined as a witness.

20. In view of the above discussion, all the above-said appeals stand **dismissed**.

21. Pending application(s) if any also stand(s) disposed of.

21.11.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No