

Punjab-Haryana High Court

Chhinder Singh And Ors. vs Paramjit Kaur on 14 November, 2005

Equivalent citations: (2006) 142 PLR 559

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Bench: S Saron

JUDGMENT S.S. Saron, J.

1.This appeal has been filed by the defendants-appellants against the judgment and decree dated 11.4.2005 passed by the learned Additional District Judge, Moga, whereby the suit of the plaintiff-respondent seeking damages has been decreed and an amount of Rs 82,000/- has been ordered to be paid by the defendants jointly and severally to the plaintiffs respondents.

2. Plaintiff-Paramjit Kaur who is minor through her mother and natural guardian filed a suit for recovery of Rs. 2.00 lakhs as damages-cum-compensation on account of injuries caused to her by the defendants appellants. The suit was filed being an indigent person being minor. It was alleged in the suit that she has been residing with her mother and on 6.4.1999 at about 4.45 p.m. all the defendants-appellants came to her father's house. They were armed with deadly weapons and started abusing her and her other family members. The father of the plaintiff asked them not to do so and they caused injuries to him as also to the mother of the plaintiff. Besides, injuries were also caused to the plaintiff herself on the head and other parts of her body. The plaintiff remained admitted at the Daya Nand Medical College Hospital, Ludhiana, for the period from 7.4.1999 to 13.5.1999, The head injury on the person of the plaintiff was opined to be dangerous to life. She spent about Rs. 1.00 lakh on her medical treatment. Regarding the incident, case F.I.R. 55 dated 7.4.1999 for the offences under Sections 307/324/452 I.P.C. etc. was also registered. Even after discharge from the hospital, the plaintiff remained under medical treatment and she has not fully recovered. The defendants contested the suit on various grounds. It was alleged that the suit is not maintainable and the plaintiff has no locus standi or cause of action. Besides, the suit was a counter blast to the suit filed by Jagsir Singh (respondent No. 4) in order to extract money from the defendants in a wrongful manner. In fact, on 6.4.1999 at about 4.45 p.m. Jagsir Singh (respondent No. 4) along with Paramjit Kaur and Charat Singh was going to his house from a Karyana shop. On the way, they were waylaid by the persons from the plaintiffs' side who were armed with deadly weapons and were raising 'Lalkaras' and saying that the defendants would be taught a lesson for raising 'Khanghura" (clearing the throat as a challenge) and they caused injuries. Paramjit Kaur (plaintiff) had also caused injuries to Jagsir Singh (defendant No. 4) but her head struck against the wall and she suffered injuries on her head. The plaintiff filed replication and the suit was contested. The learned Civil Judge (Sr Divn), Moga, after examining the evidence and material on record, vide his judgment and decree dated 28.8.2004 partly decreed the suit of the plaintiff to the extent of Rs. 50,000/- as damages with costs along with interest @ 12% p.a. from the date of institution of the suit till realization of the amount. This was, however, subject to payment of proportionate Court fee. The defendants-appellants, aggrieved against the judgment and decree of the learned trial Court assailed the same before the learned Appellate Court. The learned Additional District Judge, Moga, vide his judgment and decree dated 11.4.2005 dismissed the appeal and enhanced the quantum of damages to the extent of Rs. 82,000/- to be paid by the defendants-appellants jointly and severally. The said judgment and decree, as already noticed, is assailed in this appeal.

3. Learned Counsel appearing for the defendants-appellants has contended that the learned Lower Appellate Court had no jurisdiction to enhance the amount of damages awarded by the trial Court when no appeal had been filed by the plaintiff-respondent. Therefore, it is contended that the impugned judgment and decree is vitiated on this count. Besides, the plaintiff in any case has failed to specifically prove the extent of damages actually suffered by her as well as the expenses incurred on her treatment and the impugned judgment and decree passed by the learned Lower Appellate Court, it is contended, is without basis. Besides, it is contended that reliance has been placed on the judgment dated 25.7.2003 passed by the learned Additional Sessions Judge, Moga, in the criminal case. Against the said judgment, an appeal has been filed by the defendants and the sentence has been suspended.

4. I have given my thoughtful consideration to the contentions of the learned Counsel for the defendants-appellants.

5. The primary contention that has been raised is that the learned Lower Appellate Court could not enhance the damages awarded by the trial Court when no appeal had been preferred by the plaintiff. In this regard, it may appropriately be noticed that the learned Additional District Judge has, on appreciation of facts and circumstances of the case, considered the evidence and material on record. It was observed by the learned Additional District Judge, as follows:

The occurrence is admitted. Head injury of the plaintiff is also admitted. Treatment of the plaintiff at DMC from 7.4.1999 to 13.5.1999 remained undisputed. So medical expenses are assessed to be Rs. 20,000/-, Rs. 5,000/- as (sic. is) assessed towards pain and agony, Rs. 5,000/- (over above already assessed) is assessed towards special diet and Rs. 2000/- is assessed towards special conveyance required for shifting the plaintiff to the hospital and back along with incidental expenses. So in this manner, adding to the amount already awarded Rs. 50,000/- the aforementioned amount, the total compensation comes out to Rs. 82,000/-. In this manner, the verdict on issue No. 1 is modified to the extent that the defendants are jointly and severally liable to make payment of compensation of Rs. 82000/- to the plaintiff, Rs. 2000/- is assessed as counsel fee.

The said findings have been reached at after appreciation of evidence and material on record. The Lower Appellate Court has power in terms of Order 41 Rule 33 C.P.C. to pass a decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require. Besides, this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties who may not have filed any appeal or objection. Therefore, the learned Lower Appellate Court has the power to pass a decree which ought to have been passed or made and the said power can be exercised notwithstanding the fact that the respondent in the appeal has not appealed against the same. As such, keeping in view the provisions of Order 41 Rule 33 C.P.C, the exercise of power by the learned Lower Appellate Court in the facts and circumstances of the case cannot be said to be unreasonable or without jurisdiction.

6. The other contentions as regards the assessment of damages and the award of the same, it may appropriately be noticed that the same are based on factual consideration of the evidence and material on record which is not shown to be in any manner improper or irrational. No questions of law are involved in the case and findings and conclusions reached at by the learned Lower Appellate Court are based on appreciation of facts and material placed on record. In the circumstances, there is no ground for interference by this Court in this R.S.A.

7. For the fore going reasons, there is no merit in this appeal and consequently the same is dismissed.