

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.740 of 2016

Date of Decision: 02.12.2016

Rajeshwar @ Bittu and others

... Appellants

Vs.

Promila and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vishal Deep Goyal, Advocate,
for the appellants.

Amol Rattan Singh, J.

This is the second appeal of the defendants in a suit filed by the respondents-plaintiffs, seeking recovery of damages to the extent of Rs.20,00,000/- on account of the death of Jitender Kumar, husband of respondent-plaintiff no.1, father of respondents-plaintiffs no.2 to 6 and son of respondent-plaintiff no.7 (hereinafter to be referred to as the plaintiffs). Plaintiffs no.2 to 6 are shown to be the minor children of the late Jitender Kumar and therefore they filed the suit through their next friend, i.e. plaintiff no.1, their mother.

2. It was contended in the plaint that on 25.05.1997, the appellants, armed with gandasis and lathis came to the fields of Jitender Kumar, which had a common boundary with the appellants, as appellant no.5, the late Chander Sheikhar, wanted to build a house, which was resisted by Jitender Kumar who had asked them not to raise such construction which

actually fell in the land of Jitender Kumar etc. They were also asked to get the land demarcated before starting construction, but despite that, the appellants and their late father started digging the foundation on the boundary of the fields. When Jitender Kumar, his brother Sunil Kumar @ Mohinder, Surinder, Narinder, Babloo and Sheikha Devi tried to prevent them, appellant no.3, Ashwani, took out a knife and gave two blows with it in the abdomen of Jitender Kumar who fell down on the ground. Appellant no.1 Bittu also gave a gandasi blow on the abdomen of Jitender Kumar, appellant no.2, Pinku, gave gandasi blows to Mohinder on his head and waist, appellant no.4 Ram Rattan gave a gandasi blow to Surinder on his waist and deceased Chander Sheikhar gave a kassi blow on the waist of Babloo. Appellant no.6 also gave a gandasi blow to Narinder on his waist, whereas Bittu is stated to have given a blow to Shiekha Devi on her left hand.

An alarm having been raised, many people gathered at the spot, with the injured removed to Civil Hospital, Ambala, where Jitender Kumar was declared dead. Others were medico-legally examined.

It was further contended that Rs.15,000/- had been spent on the last rites of Jitender Kumar, and that the income of the family had come to an end as he was the sole bread earner, with the plaintiffs all dependent on his income. It was also contended that the education of the children had been discontinued and they had been deprived of the love and affection of their father and were rendered without any support.

As regards the income of the deceased, it was averred that he was working as a tailor, earning Rs.6000/- from that job and was also running a dairy and buying and selling cattle, from which he used to earn Rs.4000/- per month, thereby having a total income of Rs.10,000/- per month. It was contended

that being a large family, he was giving Rs.9000/- per month to respondent no.1, i.e. his wife, for running the household.

Yet further, it was contended that the first plaintiff had become very weak, remained under great stress and depression and was also subjected to fits regularly.

3. Upon notice being issued to them, defendants no.1 to 5 and 7 (the present appellants) contested the claim of the plaintiffs taking preliminary objections in their written statement, with regard to maintainability, locus and jurisdiction.

On merits, it was contended that the plaintiffs were not indigent persons and that the suit had not been filed by the competent person.

The plaintiffs being dependent upon deceased Jitender Kumar was also denied, as was the income of the deceased.

It was further contended that the plaintiffs and their “group of persons” also gave beatings to the defendants, due to which they had suffered grievous injuries and their lives had been endangered and in any case, it was denied that Jitender Kumar had died due to the injuries caused by any of the appellants-defendants. In fact, even the fact of any injury given to the deceased by them was denied by the appellants-defendants.

4. A replication was filed by the plaintiffs reiterating the contents of the plaint and controverting the stand in the written statement, upon which the following issues were framed by the learned Civil Judge (Senior Division), Ambala:-

- “1. Whether plaintiffs are entitled to a decree for recovery of Rs.20,00,000/- on account of murder of Jatinder Kumar with interest @ 18% p.a. from the date of filing the present suit till the date of actual realization? OPP

2. Whether suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether plaintiffs have no locus standi to file the present petition? OPD
4. Whether civil court has no jurisdiction to entertain and try the present suit? OPD
5. Relief.”

5. To prove their case, the plaintiffs examined one Sunil Dutt as PW1, ASI Ishwar Singh as PW2, the first plaintiff as PW3 and one Baru as PW4. They also tendered various documents in evidence.

6. The appellants-defendants examined defendant no.1 Rajeshwar and one Ashwin as DW2. They also tendered one document in evidence.

7. Having appraised the aforesaid evidence and pleadings, as also the arguments raised before him, it was found by the learned Civil Judge that lodging of the FIR, Exs.P1 and P2, had been proved, as had the medico-legally report, Ex.P3. Importantly, the judgment of the trial Court in the criminal proceedings initiated against the appellants, Ex.P4, was also proved by the plaintiffs, by which, except defendant no.6, all the other defendants had been found guilty of murder and for forming an unlawful assembly, for which offences they were sentenced to life imprisonment. They were also sentenced to undergo one years' imprisonment each, for the commission of offences punishable under Sections 148 and 324 IPC and for six months each for the commission of an offence punishable under Section 323 read with Section 149 IPC.

8. It was also found by that Court that no suggestion had been put by the defendants to PWs1, 2 and 3 regarding the murder of Jitender Kumar not having been caused by the defendants.

The plea of self-defence taken by the defendants in the written statement, was found to be negated in the judgment Ex.P4. The non-examination of the complainant and the doctor who had written out the post mortem report of Jitender Kumar, was also not found to be fatal to the case of the plaintiffs.

9. Therefore, holding that the present appellants-defendants no.1 and 7 having been found guilty of committing the murder of Jitender Kumar, they were liable to pay damages.

As regards the quantum of compensation, it was found that though no evidence had been led to prove that the deceased had an income of Rs.10,000/-, however, considering that he was maintaining a family of 8 persons (the seven plaintiffs and himself), it needed to be presumed that he was earning Rs.3000/- per month, especially as nothing had been stated that he was either a drunkard or a drug addict etc.

Of the aforesaid income, a $\frac{1}{5}$ th amount was deducted towards the personal expenses of the deceased, on the basis of the ratio of the judgment of the hon'ble Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another** 2009 ACJ 1298, thereby leaving the plaintiffs with a dependent income of Rs.2400/- per month, or Rs.28,800/- annually.

The age of Jitender Kumar was given to be 28 years in the post mortem report, Ex.P3; however, in the absence of any evidence led with regard thereto, the learned Civil Judge held that he would have been about 32 years of age, considering that he had five children, between the birth of each of whom, there was a difference of 1 to 2 years.

Therefore, again applying the ratio of *Sarla Verma's* case

(supra), a multiplier of 12 was applied to the annual dependent income of Rs.28,800/-, thereby coming to a loss of income of Rs.4,60,800/- to the plaintiffs.

That was the entire amount awarded to them, alongwith interest @ 6% per annum, running from the date of the death of the deceased, i.e. 25.05.1997, till the realization of the amount.

The suit of the plaintiffs was thus decreed to the aforesaid extent.

10. The present appellants having filed an appeal before the first appellate Court, that Court also, after noticing the pleadings and the evidence led, as also considering the judgment of the Civil Judge, found that in the appeal filed by the present appellants against the judgment of the learned trial Court in criminal proceedings, this Court had acquitted all the present appellants, other than appellant no.3 Ashwani @ Rinku, for causing the death of Jitender Kumar; and as regards Ashwani also, his conviction was altered from one under Section 302 IPC to one under Section 304-II thereof. However, even though the appellants were not held guilty of murder, the learned first appellate Court held (in the present *lis*), that they were still liable to pay damages to the plaintiffs, Jitender Kumar in any case having died at the hands of Ashwani.

It was also noticed that the other appellants were convicted for having committed offences punishable under Section 324 IPC by this Court, in its judgment (Ex.A1 before the learned lower appellate Court).

11. On the question of the quantum of compensation, the income of the deceased assessed by the learned trial Court and the method by which the total compensation awarded was arrived at, was also not found to be erroneous by the first appellate Court.

Consequently, the first appeal filed by the present appellants was dismissed by the learned Additional District Judge.

12. Before this Court, Mr. Vishal Deep Goyal, learned counsel for the appellants, also drew attention to the judgment of the Division Bench of this Court in Criminal Appeal No.124-DB of 2002 (Ex.A1 before the learned lower appellate Court), to submit that once the appellants had all been acquitted of the offence of murder and in fact, only one of them, i.e. appellant no.3, had been convicted for an offence punishable under Section 304-II IPC, with the Division Bench also having found it to be a sudden fight, no damages are payable by the appellants to the respondents-plaintiffs.

He submitted that this is especially so, in view of the fact that the appellants had themselves suffered injuries and in fact, they had also led evidence to that effect in the criminal proceedings before the trial Court. In this regard, he drew attention to that part of the judgment, Ex.A1 (produced in Court by learned counsel), in which DW1 (in the criminal proceedings), Dr. Shiv Anand, had deposed that he had medico-legally examined Ashwani Kumar on 25.05.1997 at 10:55 am and had found four injuries on his person, including an incised wound of 4 cm x 1 cm, muscle deep on the right thigh, and three abrasion on the fore-arm, left knee and right knee joint.

The late father of the appellants, Chander Sheikhar, was also found to have suffered similar injuries on the finger and an abrasion on the ribs.

13. Learned counsel thus submitted that even though the said evidence was not led in the present *lis*, i.e. in civil proceedings, however, the judgment of the Division Bench itself having been led by way of evidence before the lower appellate Court, the evidence led before the trial Court in

criminal proceedings would be admissible in evidence even in the civil proceedings.

14. He further submitted that actually it was the complainant party that had attacked the appellants due to the construction of the boundary wall and as such, the appellants, who are also poor persons, cannot be held liable to pay compensation.

15. On the question of the quantum of compensation awarded also, learned counsel submitted to the same effect, that the appellants are poor persons could not pay compensation and in any case, there having been no proof whatsoever of the income of the deceased, at best he could have been taken to be an unskilled worker, whose income in the year 1997 could not be more than Rs.1600/- per month.

16. Having heard arguments of learned counsel, I find myself unable to agree with the contentions raised by him, in view of the fact that undoubtedly, the deceased, Jitender Kumar, was found even by the Division Bench to have died at the hand of appellant no.3, Ashwani @ Rinku; thus, even if it was found not to be a premeditated crime, most definitely his death was the result of the fight which took place at the spot.

Thus, if in motor vehicle accident claims cases, upon negligence in driving having been proved, the driver and owner of the vehicle that caused the death of a person, are held liable to pay compensation to the legal heirs of the deceased, there would be no reason whatsoever, to not hold the person (s) at whose hands a person is killed in a fight, not liable to pay such damages/compensation, to the legal heirs of the deceased.

Again undoubtedly, Jitender Kumar died due to injuries inflicted by a sharp edged weapon by appellant no.3. Thus, appellant no.3 knowing

fully well that his act of stabbing the deceased, could lead to his death, even if there was no intention to actually cause his death, he cannot be absolved of guilt, as has already been established by the judgment of the Division Bench in criminal proceedings. Hence, it was by his overt act, amounting obviously to much more than just negligence, that the death of Jitender Kumar occurred.

17. As regards the other appellants, even though they were not held guilty of the death of Jitender Kumar, they too formed a part of the party that had caused various injuries on Jitender Kumar and others, and even though their conviction by the Division Bench was not in respect of offences punishable under Sections 148 and 302 IPC, or even of any offence read with Section 149 thereof, in the opinion of this Court, as regards civil damages to be paid to the legal heirs of the deceased, they would be equally liable, all having formed a part of a party that had fought with lethal weapons against the complainant party, leading to the death of one on the side of the complainant.

18. Coming to the argument of learned counsel for the appellants that the appellants were also found to have been injured, firstly, even as per the judgment of the Division Bench, the injuries on both the appellants, i.e. appellants no.3 and 5, were simple injuries to the extent of abrasion and incised wounds on non vital parts of the body, i.e. the fingers in case of the appellant no.5 and the thigh in case of appellant no.3. Those injuries were also found to have been possibly caused by a “friendly hand”. No cross FIR was found to have been registered, and no conviction of any person on the complainants' side has been brought to the notice of this Court, for having caused any injuries to the appellants. Thus, with the injuries on two of the appellants only being superficial injuries, and in the preponderance of

probability, caused by a 'friendly hand', the death of Jitender Kumar has to be held to be caused by the appellants as a group, as regards civil liability.

19. In the aforesaid circumstances, the appellants all being immediate family to each other, with the late appellant no.5 being their father and all having been involved in a fight with the complainant side, leading to the death of Jitender Kumar at the hands of appellant no.3 and with the other appellants also having been found guilty of the commission of offences under Section 324 IPC, I see no reason at all to hold that they are not liable to pay compensation or damages to the respondents-plaintiffs.

20. As regards the quantum of compensation awarded, though undoubtedly learned counsel for the appellants is correct to the extent that in the year 1997, even as per the notification issued by the Government of Haryana laying down the minimum wages payable to an unskilled worker, such minimum wage is found to be Rs.1548.74 per month, (if this Court was to take judicial notice of such notification and even take the notification as additional evidence), that would be no reason to hold that the deceased was not having an income of Rs.3000/- per month, wholly on the reasoning adopted by the Courts below. That is to say, that with five children, one wife and one mother and himself to support, obviously the income of the deceased was not just limited to the bare minimum wages notified by the State of Haryana. Though obviously, the deceased was also a land owner to some extent, the fight between him and his companions with the appellants being over the boundary of the fields of the respective parties, the income from such land, if at all it was agricultural land, was not proved by either side.

Thus, as already stated hereinabove, with eight mouths to feed, the income of the deceased could not have been held to be less than Rs.3000/- per month.

Similarly, the method to arrive at the total compensation on account of the loss of income, as was adopted by the Courts below, is not found to be erroneous in any manner, a deduction of 1/5th having been made towards the personal expenses of the deceased in terms of the ratio of *Sarla Vermas'* case (supra), and thereafter a multiplier of 16 having been applied, the deceased having been held to be 32 years of age by the learned Civil Judge, (in the absence of any strict proof of age but with five children having been born to him and his wife, all of minor age when the suit was filed).

21. In any case, even if the minimum wages of Rs.1550/- per month were to be assessed as the total income of the deceased, then, after deducting 1/5th towards his personal expenses, the loss of monthly dependent income to the appellants would be Rs.1240/- or Rs.14,880/- annually. If a multiplier of 16 is to be applied to the aforesaid sum, the loss of income would amount to Rs.2,38,080/-.

In the opinion of this Court, the first respondent-plaintiff, i.e. the widow of the deceased, would also be entitled to compensation towards loss of consortium, of Rs.1,00,000/-, the five children of the deceased would be entitled to at least Rs.2,00,000/- in all for the loss of love and affection, care and guidance of their father, and the mother of the deceased would be entitled to at least Rs.50,000/- as compensation for the loss of love and affection of her young son. Further, the widow of the deceased would be entitled to Rs.25,000/- towards the expenses on the last rites of the deceased. If compensation under those heads is taken into account, then even on a

minimum income of Rs.1500/- per month assessed to the deceased, the total compensation would work out to more than to Rs.6,00,000/-, whereas the Courts below have awarded Rs.4,60,800/- and that too wholly on account of loss of income to the plaintiffs.

That having been said, to repeat, this Court is of the opinion that the income of Rs.3000/- per month of the deceased, as assessed by the Courts below, is not in any case found to be excessive in any manner.

22. Hence, without casting any prejudice on the rights of the respondents-plaintiffs in any appeal that may have been filed (though none has been brought to the notice of this Court), seeking enhancement of the damages awarded to them, the suit being one seeking damages of Rs.20,00,000/-, finding no merit in the present appeal, it is dismissed in limine, but with no notice having been issued to the respondents, nothing is said with regard to costs.

December 02, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE

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