

(2011) 02 P&amp;H CK 0419

**High Court Of Punjab And Haryana At Chandigarh****Case No:** First Appeal from Order No's. 1520 and 1742 of 1992 (O and M)

Ram Singh

APPELLANT

Vs

Bhana and Another

RESPONDENT

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**Date of Decision:** Feb. 4, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 2, Order 21 Rule 2(2), Order 23 Rule 3, 89
- Constitution of India, 1950 - Article 226, 227, 32
- Criminal Procedure Code, 1973 (CrPC) - Section 357(3)
- Motor Vehicles Act, 1988 - Section 140, 166

Citation: (2011) 162 PLR 27 : (2011) 3 TAC 26

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

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**Judgement**

K. Kannan, J.

The appeals are against the award of compensation u/s 140 of the Motor Vehicles Act. The claimant had suffered injuries by the conduct of the Respondent's driver, who drove the tractor on the claimant, causing injuries on his leg for which evidence had been led, but the Court found that if a compensation were to be awarded by the scale provided through Section 166, then the claimant was entitled to be compensated at Rs. 75,000/-. However, an award to that extent was not passed and it was restricted to Rs. 12,000/- on no fault basis on a finding that the injuries were not out of any accident though it was by the use of a motor vehicle. It was in evidence that the owner of the tractor had animosity against the claimant and on account of such ill-will, the vehicle was deliberately driven on the claimant by shouting vulgar epithets against the claimant, vowing to teach him a lesson. The Tribunal found that this could not be treated as an injury resulting by the use of a motor vehicle negligently. Consequently, the award, that was passed, was only u/s

140. The claimant had preferred an appeal in FAO No. 1520 of 1992 and the owner and driver have preferred an appeal in FAO No. 1742 of 1992.

2. The Motor Vehicles Act gives relief for compensation for death or bodily injury arising out of the use of a motor vehicle. The claims under the Motor Vehicles Act are a specie of tort and damages for death or injury caused to a person with the deliberate criminal intent, shall not be an issue for adjudication before a Tribunal. To that extent, the finding of the Tribunal was justified. However, when the matter is in appeal before this Court, I am prepared to examine on a larger conspectus of the liability of a person, who causes harm to a person with the criminal intent. Even in criminal jurisprudence, law is gravitating towards the principles of restitution and the Code of Criminal Procedure itself provides through provision u/s 357(3) for compensation to be provided to the victim and for enforcement of such rights against the accused. A High Court exercising jurisdiction under Article 226 or the Hon'ble Supreme Court under Article 32, could provide for compensation to victims of police atrocity. (To writ, [Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others](#), ). A civil action for compensation for battery is possible, as held in [Samira Kohli Vs. Dr. Prabha Manchanda and Another](#), . In other words, no system of law would be let off a perpetrator of civil or criminal wrong without a remedy for compensation for victim of the wrong. I will, therefore, not allow myself to be fettered in the manner that the Tribunal felt compelled to do and would find the owner and driver of the tractor to be responsible for compensating the victim by their willful act. The attempt at the trial before the Tribunal by the owner and driver of the tractor was to show that due to some fights between them, some stones were hurled against the claimant resulting in such injuries. Medical evidence was brought before the Tribunal which was to the effect that the injuries found on the Petitioner could not have been caused by stones and it was most likely that such injuries were caused at the time and manner by which the claimant stated that the injuries were caused.

3. The claimant had suffered fracture and crush injuries for which compensation was awarded and I will hold the amount of Rs. 75,000/- found as payable by the driver and owner of the tractor, who are the Appellants in FAO No. 1742 of 1992 shall be so paid. The learned Counsel for the Appellants in FAO No. 1742 of 1992 would contend that there had been a compromise between the parties and they have agreed not to enforce the same. The only compromise that a Court could act on, before a decree is passed, is a compromise that could be accepted in the manner provided under Order 23 Rule 3 CPC or any settlement that is arrived through the formulations prescribed u/s 89 of the Code of Civil Procedure. Learned Counsel states as an alternative plea that if an award is passed and if it is sought to be enforced, the issue of enforceability could be relegated at the time of execution. This, I am afraid, again cannot be accommodated, for, the award or decree that is passed, in order that it is not enforceable, must be resultant to an arrangement

between a decree holder and judgment debtor that is duly recorded in Court in the manner referred to under Order 21 Rule 2(2)(a) Code of Civil Procedure. A settlement that is not recorded, after a decree, in terms of Order 21 Rule 2, cannot be enforced, even if true, as laid down by the Hon"ble Supreme Court in Lakshmi Narayanan v. S.S. Pandian (2007)7 S.C.C. 240. If it is before a decree, the settlement itself will extinguish the claim or operate as full accord and satisfaction, so that a decree itself could not be passed. If a decree is passed, then a pre-decree settlement cannot be set up when a decree is sought to be executed.

4. The award is modified to provide for a compensation of Rs. 75,000/-. The amount in excess over what has been determined by the Tribunal already, shall attract interest at 6% from the date of petition till date of payment.

5. The modification has been done in exercise of power vested in this Court, in its power of superintendence under Article 227 of the Constitution.

6. FAO No. 1742 of 1992 filed by the owner and driver shall stand dismissed and FAO No. 1520 of 1992 is allowed to the above extent.