

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: July 11, 2012
Judgment pronounced on: July 19, 2012

+ **RFA 586/2004**

RANI & ORS. Appellants
Through Mr. D.K. Sharma, Adv.

versus

N.D.P.L. & ANR. Respondents
Through Mr. Vikram Nandrajog, Adv. for R-1.

AND

RFA 589/2004

KRISHNA & ORS. Appellant
Through Mr. D.K. Sharma, Adv.

versus

N.D.P.L. & ANR. Respondents
Through Mr. Vikram Nandrajog, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

1. By this common judgment, I shall dispose of both the appeals referred above. The facts giving rise to the filing of these appeals can be summarized as under:-

The plaintiffs in the suit subject matter of RFA 589/2004 are the legal heirs

of late Shri Suraj Bhan, whereas the plaintiffs in the suit which is the subject matter of RFA 586/2004 are the legal heirs of late Shri Jagdish Sharma. Late Shri Suraj Bhan and late Shri Jagdish Sharma were brothers and they, along with their respective families, were living in House No.320, Dheerpur, Near Nirankari Colony, Delhi, situated in a narrow street. An electricity poll had been installed by the defendant/respondent in that street, for the purpose of supplying electricity to the residents of locality. It was alleged in the complaints that the wires feeding electricity to the houses in this locality were allowed by the defendant Delhi Vidyut Board (DVB) predecessor in interest of respondent No.1 NDPL, to hang loosely in the street and being quite weak and feeble, those wires used to break very often, thereby causing danger to the life of the people residing in the locality. It was further alleged by them that the wires were never replaced, despite repeated requests. The case of the plaintiffs/appellants is that during electricity failure in the locality in the night of 27.09.1998, Sunil Kumar, nephew of late Shri Jagdish Sharma and late Shri Suraj Bhan came out in the street to ease himself. At that time, an electricity wire, which had broken, was hanging loosely and was not visible. The hand of Sunil Kumar came in contact with that live electric wire. He immediately shouted for help. On hearing the alarm raised by him, late Shri Suraj Bhan went out to ascertain what had happened. He caught Sunil Kumar in order to save him. As a result, he was electrocuted and fell down. Late Shri Jagdish

Sharma also came out on hearing the alarm raised by Sunil Kumar, in order to save him. He too came into contact with him and got electrocuted. Both Jagdish Sharma and Suraj Bhan, when taken to the hospital, were declared brought dead. On postmortem being conducted, it was opined that they had died on account of having come into contact with electric wire. A sum of Rs.4,75,000/- each was claimed as compensation in both the suits.

2. The defendant/respondent DVB filed written statement contesting the suit and alleged that the deceased tried to restore electricity supply to their premises, by illegal means, from the DVB (Mains) at the time this incident took place and there was no negligence on its part. The defendant DVB denied that the cables provided by it were weak and feeble and used to break quite often. It was, however, admitted that Shri Sunil Kumar and late Shri Suraj Bhan and Jagdish Sharma had come into contact with electric wires. It has, also, not denied that there was electricity failure in the locality in the night of 27.9.1998.

3. The following issues were framed on the pleadings of the parties in the suit subject matter of RFA 586/2004:-

- (a) Whether the death of Shri Jagdish occurred on account of the negligence of the DVB?
- (b) Whether the plaintiffs are entitled to the compensation and if so, to what extent?

(c) Whether the plaintiffs are entitled to interest, if so at what rate?

(d) Relief.

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4. Shri Sunil Sharma, who has been examined as PW-2 and who admittedly had come into contact with electric wire in the night of 27.09.1998, has stated that at about 3.45 am, no light was available in the house. He got up for urinal and went outside in the street. He urinated in the street and the moment he took turn, electric wire, which was broken, touched his right hand palm and he got electric shock. On hearing his cry, his uncle late Shri Suraj Bhan and Jagdish Sharma came there. He specifically stated that the wire which touched his body was hanging and that it was due to the negligence of DVB that he had got electric shock. In cross-

examination, he had stated that they had DVB meters, in their house. He denied that he had gone out of the home at 3.45 AM to restore electricity supply to his house. PW3 Rajesh Kumar has stated that when he came out on hearing news at about 3.45 – 4 AM, he found Sunil Kumar, Suraj Bhan and Jagdish Sharma lying in the street. He removed the electric wire, using a plier for this purpose and took them to hospital where Suraj Bhan and Jagdish Sharma were found dead, whereas Sunil Kumar was admitted in the emergency ward of the hospital. He corroborated the deposition of Sunil Kumar to the effect that the wire had broken from DVB and was hanging in front of their door. He denied the suggestion that the deceased as well as Sunil Kumar were trying to illegally restore electricity from the LV Main, when this incident took place. He also denied the suggestion that Sunil Kumar had gone out in the morning to restore snapped wire and the incident occurred at that time. He claimed that neither the deceased nor his son Sunil Kumar knew how to repair electric wire. PW-5 Ashok is also resident of House No.320, in village Dheerpur. He has stated that on hearing alarm, he came down stair and found Jagdish Sharma, Suraj Bahn and Sunil Kumar on the road side. This witness also saw that the overhead electric line had snapped. He denied the suggestion that the deceased were attempting to repair the tapping to overhead the lines.

5. In rebuttal, the defendant examined two witnesses namely R.K.Aggarwal, Assistant Manager (Systems), North Zone, Sunil Kumar, JE(CE), District Bawana.

In his deposition, Mr. R.K.Aggarwal stated that at about 5.45 AM, a message was received that wire was found broken in village Dheerpur. He further stated that the faulty portion was isolated and the supply of the remaining area was restored. He also stated that during investigation, it came to be known that there was no electricity supply in House No.320 due to fault in service line and that Sunil Kumar had tried to tap DVB LV Mains, for restoring supply with the help of bamboo and one wire touched his body, as a result of which he received shock and cried whereupon his uncle Suraj Bhan rushed to save him but they also received shock. Thereafter Jagdish Sharma rushed to save them and received electric shock. DW2 Shri Sunil Kumar has corroborated the deposition of Shri R.K.Aggarwal. Both of them also claimed that one wire remained touched with the body of Sunil Kumar (PW-2) and other was connected with DVB mains.

6. This is not in dispute that both late Shri Jagdish Sharma and late Shri Suraj Bhan died of electrocution in the night of 27.09.1998 and the incident took place in the street in which the house, in which they were living, abutted. It is also an admitted position that there was electric failure in the locality at about the time this incident took place. Even DW-1 and DW-2 have stated in their affidavit by way of evidence that due to fault in service line, there was no supply of electricity in House No. 320. The case of the appellants/plaintiffs is that the electric wire which touched PW-2 Sunil Sharma was hanging in the street, whereas the case of the

defendant/respondent is that Sunil Sharma was trying to unlawfully extract energy from the Electric Mains of Delhi Vidyut Board and in the process he got electrocuted.

7. No evidence was led by the defendant/respondent to prove that Sunil Sharma was trying to obtain electricity from DVB Mains at the time this incident took place. Neither DW-1 nor DW-2 was present at the time this incident took place and no other witness was produced by the defendant/respondent. No photograph, indicating an attempt to connect DVB Mains to the premises of deceased Jagdish Sharma and Suraj Bhan was produced by the defendant/respondent. No private wire alleged to be used for connecting DVB Mains to the premises of deceased Jagdish Sharma and Suraj Bhan was seized by DVB officials from the site. In the absence of any evidence to the contrary from the defendant/respondent, I see no reason to disbelieve the emphatic deposition of PW-2 Sunil Sharma, who admittedly was amongst those who were electrocuted, though luckily for him he survived, whereas both his uncles succumbed to the electric shock. The testimony of Sunil Sharma finds corroboration not only from the testimony of Rajesh Kumar, but also from the testimony of PW-5 Ashok Kumar who lodged FIR No. 282/1998 (Ex.PW-6/1) on the same date and alleged that an electric wire had got broken and touched Sunil at the time he was easing himself near the gate of the house. This

statement made by Ashok Kumar soon after the incident, corroborates his deposition in the Court.

8. More importantly, the admitted facts and circumstances of the case also do not support the defence taken by the defendant/respondent. It is an admitted fact that regular electricity connections were installed in the house in which the deceased were residing. The electricity bills issued by DVB have been filed by the plaintiffs. If there is a power failure during night, in the normal course of human conduct, the residents of the house facing power failure would lodge a complaint of no current with DVB either on telephone or by going to local sub-station. This would be contrary to the normal course of human conduct for a person to go out at about 3.45 AM to connect DVB Mains to his house, using an electric wire for this purpose. Ordinarily, no one would keep such a long wire in his house and it is not possible to procure wire at that hour of the night. Even otherwise, no one would normally take the risk of coming into contact with an electric wire merely to enjoy electricity for a period so short as the time between the power failure and resumption of power supply. Had there been no regular electricity connection in the house in which deceased Jagdish Sharma and Suraj Bhan were residing, it could possibly be said that PW-2 Sunil Sharma was trying to draw electricity in an illegal manner by connecting his premises to DVB Mains. But, a person provided with regular electricity connection is not likely to resort to such an illegal and extremely

risky step, for an extremely short duration. Therefore, though the defendants have not produced any evidence in support of the version given in the written statement, even otherwise the defence disclosed in the written statement is inherently improbable. In fact, during cross-examination of PW-3 Rajesh Kumar, it was specifically suggested to him that his son had gone out in the morning to repair the snapped wire and that the incident had occurred at that time. Giving this suggestion, by itself, implies that wire in the street was hanging broken when this incident took place.

9. Since the version of the incident, disclosed in the written statement, has not been proved and is otherwise improbable, there is no reason to disbelieve the testimony of the witnesses of the plaintiffs to the effect that DVB wire had got broken and was hanging in the street, at the time this incident took place. Obviously, if the version given by the defendant/respondent is ruled out, electrocution could not have taken place without a wire getting broken and hanging in the street.

10. It was the duty of the Delhi Vidyut Board (DVB) to maintain its wires and keep them in appropriate condition. The defendant/respondent was also required to replace the old/weak wires from time to time, so as to eliminate the risk of the wire getting broken, someone coming in its contract and getting electrocuted. The defendant/respondent has not come out with any particular reason for its wire to get

broken and hanging in the street. Hence, the inevitable inference is that the wire was old and/or weak and consequently it got broken and started hanging in the street. Had the defendant/respondent been vigilant in performance of its duties towards the residents of the locality and replaced the old/weak wires well in time, this incident of electrocution would not have taken place. Issue No. (a), therefore, decided against the defendant/respondent and in favour of the plaintiffs/appellants.

11. Even if I presume that the electric wire had got broken for some reason other than its being old and weak, the defendant/respondent would still be liable to pay suitable compensation to the plaintiffs. Since it is only the defendant which could tell the Court as to how and for what reason its wire had got broken. The well-known maxim “*res ipsa loquitur*” can be safely applied in an accident of this nature where the cause of accident is primarily within the knowledge of the defendant.

This maxim is stated as under in its classic form:-

“Where the thing is to shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.”

With respect to the aforesaid maxim Supreme Court in **Shyam Sunder and Ors. vs. The State of Rajasthan** AIR 1974 SC 890 *inter alia* observed as under:-

“The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it, even when the facts bearing on the matter are at the outset unknown to him and often within the knowledge of the defendant....

The maxim is based on common sense and its purpose is to do justice when the facts bearing on the causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant (see *Barkway v. S. Wales Transport* [1950]1 AER 392)....

The plaintiff merely proves a result, not any particular act or omission producing the result. If the result in the circumstances, in which he proves it, makes it more probable than not that it was caused by the negligence of the defendant, the doctrine of *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability....

Over the years, the general trend in the application of the maxim has undoubtedly become more sympathetic to plaintiffs. Concomitant with the rise in safety standards and expanding knowledge of the mechanical devices of our age less hesitation is felt in concluding that the miscarriage of a familiar activity is so unusual that it is most probably the result of some fault on the part of whoever is responsible for its safe performance (see John, G. Fleming, *The Law of Torts*, 4th ed., p.260).”

As noted by Supreme Court in **Shyam Sunder** (supra), the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering damages, though as far as the case before this Court is concerned, the plaintiffs/appellants have specifically alleged that the electric wire had got broken on account of its being old and weak.

In **K.L. Juneja vs. M/s. Bawa Dan Singh and Sons**, 1997 I AD (DELHI) 317, the plaintiff, who had visited the building on the invitation of an employee of defendant No.1, fell into the basement of a building through an opening which had not been fenced, as a result he received multiple fractures. This Court was of the view that as the building was owned by defendants No.1 to 3 it were they who were responsible for the safety of the visitors and were obliged to keep the dangerous openings closed adequately so that there was no chance of a mishap. Applying the principle of *res ipsa loquitur* the Court was of the view that it was not for the plaintiff to prove that defendants were negligent or lacked foresight. On the contrary it was for the defendants to prove that they were not negligent and had taken every precaution to safety and precaution of all invitees and visitors.

Since the electric wire which got broken belonged to the defendant/respondent and admittedly was under its care and control, the explanation given by the defendant for snapping of the wire does not stand substantiated and no other reason is forthcoming from the defendant/respondent for

snapping of wire which touched PW-2 Sunil Sharma, the doctrine of *res ipse loquitur* would squarely apply to the case before this Court.

12. **Issue No. (b)**

The plaintiffs/appellants have led oral evidence to prove the income of late Shri Jagdish Sharma and Shri Suraj Bhan. According to PW-1 Raj Rani, widow of Shri Jagdish Sharma, her husband used to earn Rs 5,000-6,000/- per month from selling food and vegetables and Rs 10,000/- per month from selling milk. According to Smt. Krishna Devi, widow of Shri Suraj Bhan, her husband used to earn about Rs 8,000-10,000/- from the *Kiryana* shop, which he was running in the village and Rs 10,000/- per month from sale of milk. However, no documentary evidence such as income-tax return has been produced by them to prove the income of late Shri Jagdish Sharma and Shri Suraj Bhan. In a suit for damages based on tort, the Court, in order to decide the quantum of damages/compensation, needs to estimate as to what was deceased person's expectation of life, had he not been killed when he actually was and what sums, during his remaining life, he would have applied to support his dependents. It cannot be disputed that an accurate ascertainment of pecuniary loss to the aggrieved party is just not possible. There being no uniform rule for measuring the value of human life, it is impossible to calculate the quantum of damages with mathematical precision. The ascertainment

of quantum of damages, therefore, necessarily depends upon the particular facts and circumstances of each case.

13. There is no age of retirement of a person engaged in a business such as running a kiriyana shop, selling fruits and vegetables or selling milk. Deceased Jagdish Sharma and Suraj Bhan, therefore, could have continued earning from the business in which they were engaged till the time their age and health permitted them to do so. It has come in evidence that late Jagdish Sharma whose legal heirs are plaintiffs in the suit subject matter of RFA 586/2004, was earning about Rs.5000/- to 6000/- per month from selling fruits and vegetables in a shop which he had taken on rent and Rs.10,000/- per month from selling milk. This is not the case of the defendant/respondent that late Sh. Jagdish Sharma was not engaged in the business of selling fruits and vegetables from a shop or in selling milk. No such suggestion was given to PW1 Smt. Rani widow of late Jagdish Sharma in her cross examination. PW4 Jai Bhagwan is the landlord of the shop which Jagdish Sharma had taken on rent and he has confirmed that Jagdish Sharma used to sell fruits and vegetables from that shop. This witness also used to purchase fruits and vegetables from him. Though exact age of late Sh. Jagdish Sharma has not been proved during evidence, his age given in the postmortem report is 40 years. If I take the income of Jagdish Sharma at Rs.4,500/- per month, apply the principles applicable for determination of compensation in vehicular accidents and take the multiplier of 14,

his family would be entitled to compensation of more than Rs.5 lac after deducting $\frac{1}{3}^{\text{rd}}$ of his income for his personal expenditure. If I take his income at Rs.3,600/- per month, the amount of compensation, applying multiplier of 14 and after deducting $\frac{1}{3}^{\text{rd}}$ of the income for his personal expenditure, would still come to More than Rs. 4 lac.

As regards late Suraj Bhan, I find that according to his widow Smt. Krishna Devi, he was earning about Rs.8000/- to 10,000/- per month from the kiryana shop which he was running in village Ibrahmpur and Rs.10,000/- per month from selling milk. During cross examination of Smt. Krishna Devi, it was not disputed that deceased Suraj Bhan was engaged in the business of running kiryana shop and selling milk. No such suggestion was given to her during cross examination. If I take the income of Sh. Suraj Bhan at Rs.6000/- per month from both the businesses in which he was engaged and apply multiplier of 11, the amount of compensation payable to his family, after deducting $\frac{1}{3}^{\text{rd}}$ of his income for his personal expenditure, would come to more than Rs. 5 lac. If I take his income at Rs.4500/- per month and apply multiplier of 11, the amount of compensation come to Rs.3,96,000/- after deducting $\frac{1}{3}^{\text{rd}}$ of his income for his personal expenditure.

Taking into consideration all the facts and circumstances of the case, I am of the view that the legal heirs of late Sh. Jagdish Sharma, who are the plaintiffs in the suit subject matter of RFA 586/2004, should be awarded compensation amounting

to Rs. 4 lac whereas the legal heirs of late Sh. Suraj Bhan, who are the plaintiffs in the suit subject matter of RFA 589/2004, should be awarded compensation amounting to Rs.3.5 lac. The appellants are also entitled to pendente lite and future interest @ 6% per annum. The issues are decided accordingly.

13. For the reasons stated hereinabove, the impugned judgments and decrees are set aside. A decree for recovery of Rs.4 lac with proportionate cost and pendente lite and future interest @ 6% per annum is passed in favour of the plaintiffs/appellants and against the respondent NDPL which is the successor in interest of erstwhile Delhi Vidyut Board, in the suit subject matter of RFA 586/2004 and a decree for recovery of Rs.3.5 lac with proportionate cost and pendente lite and future interest @ 6% per annum is passed in favour of the plaintiffs/appellants and against the respondent NDPL which is the successor in interest of erstwhile Delhi Vidyut Board, in the suit subject matter of RFA 589/2004. Decree sheet be drawn accordingly. LCR be sent back.

V.K.JAIN, J

JULY 19, 2012
‘sn’/bg/‘raj’