

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
RFA. No.06 of 2022

1. Smti. Pappi Debnath (Bhattacharjee) @ Papiya, wife of late Prbal Bhattacharjee, 30 years.
2. Master Tamal Bhattacharjee, son of late Prbal Bhattacharjee, 07 years.

Both are residents of West Lalchari, P.O. Kulai Bazaar, P.S. Ambassa, District: Dhalai Tripura.

[The plaintiff-appellant No.2 being minor is represented by his natural guardian mother namely Smt. Pappi Debnath (Bhattacharjee) @ Papiya, the plaintiff- appellant No.1]

-----Plaintiff-appellant(s)

-V-E-R-S-U-S-

1. The State of Tripura, represented by Principal Secretary, Department of Power, Govt. of Tripura. Secretariat Bhawan, New Capital Complex, Agartala, West Tripura, PIN-799010.
2. The Chief Managing Director, Tripura State Electric Corporation Ltd., Bidyut Bhawan, Bodhjung Chowmuhoni Agartala, West Tripura, PIN-799001.
3. The Deputy General Manager, Ambassa Electrical Division, TSECL, Ambassa, Dhalai Tripura, PIN-799289.
4. The Senior Manager (Elect.), Ambassa Electrical Sub-Division, TSECL, Ambassa, Dhalai Tripura, PIN-799289

-----Defendant-respondent(s)

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE [ACTING]
HON'BLE MR. JUSTICE ARINDAM LODH

For Petitioner(s)	:	Mr. D. R. Chowdhury, Sr. Advocate. Mr. Dipak Deb, Advocate
For Respondent(s)	:	Mr. P. Gautam, Advocate. Mr. N. Majumder, Advocate.
Whether fit for reporting	:	<i>YES/NO</i>

Judgment and Order dated 29th March, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Deb, learned counsel appearing for the appellants. Also heard Mr. P. Gautam, learned counsel and Mr. N. Majumder, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-96 of the CPC against the judgment dated 14.09.2021 passed by the learned Civil Judge, Sr. Division, Court No.2, Dhalai Judicial District, Ambassa in connection M.S.03 of 2019.

[3] The brief facts, leading to this appeal are that the husband of plaintiff No.1, the appellant No.1 herein, was the water supply pump operator. He was engaged in the water supply pump of West Lalchari Gram Panchayat under the Sub-Division Officer (DWS), Drinking Water Sanitation Sub-Division, Ambassa which was run by electricity. The husband of the appellant No.1 used to operate the side electric pump very sincerely and used to supply drinking water in the area regularly. It has been alleged that the power department had installed a transformer at the adjacent site of the water supply pump hose and the fuse of the power line was installed with a coconut tree and the deceased had repeatedly requested the concerned person of the power department to shift the same and to install it within the pump house premises, but the power department negligently did not take any steps in this regard.

[4] Thereafter, on 16th day of March, 2017 at about 11.15 hours when the husband of the appellant was trying to operate the said water supply pump, he found fault in the power supply. Thereafter, when the husband of the appellant tried to fix the fuse fitted on the coconut tree, he got electrocuted. It is further alleged that the entire coconut tree was charged with electric energy of high voltage and when the husband of the

appellant No.1 came in contact with the coconut tree, he received burn injuries on his body. Thereafter, the matter was informed to the local fire service authority. On receipt of that information, the staffs of the fire service went to the spot and took the deceased to kulai District Hospital where medical officer declared him brought dead and the matter was entered in the GD book of Ambassa P.S. vide G.D. no. 21 dated 16.03.2017 under Section-174 of the Cr. P.C. and an investigation was carried on which revealed that the death of the husband of the appellant No.1 was caused due to electrocution.

[5] The appellant No.1 also stated to have served a notice upon the respondents claiming compensation for causing death of victim due to gross negligence on the part of the respondents. The respondent No.4 though issued one letter dated 21st September, 2017 addressing to the appellant No.1 to submit relevant documents in respect of her claim. Accordingly, the appellant No.1 submitted her application annexing all the relevant documents but, the respondents did not pay any compensation. Thereafter, finding no other alternatives, the appellants have filed a suit before the Court below. It is also alleged that at the time of occurrence, deceased was aged about 35 years and his monthly salary was Rs.5,000/- and in addition to that, he used to earn Rs.15,000/- per month as a motor mechanic. In total, his monthly income was Rs.20,000/- and used to contribute his total income towards the livelihood of his wife and son i.e. the other appellants in this appeal. But due to sudden death of deceased, the appellants have lost the said financial contribution from the side of the deceased.

[6] After institution of the suit before the Court below, summons were duly served upon the respondents but, did not turn up and contested the suit. Hence, the suit proceeded ex-parte against all the respondents and the case was fixed for ex-parte hearing. During hearing of the suit ex-parte,

the appellant No.1 has examined herself as PW-1 and also examined another witness as PW-2 and exhibited 10 numbers of documents to prove her case. The respondents have remained absent throughout the trial and did not adduce any evidence either documentary or oral.

[7] Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Deb, learned counsel appearing for the appellants has submitted that the judgment and decree of dismissal of the suit of the plaintiff-appellants passed by the learned Court below is bad in law and not warranted by facts and circumstances of the case.

[8] The learned Court below committed wrong and illegalities in deciding the case dismissing the suit as barred by limitation deciding the case under Article-82 of the Limitation Act where, the suit for damage is instituted for compensation for the loss of life by electrocution even by fatal accident limitation should be considered and followed under Article-137 of the Limitation Act being prescribed as three years from the date of death.

[9] He has further submitted that the learned Court below while decided all the questions and considered the evidences adduced by the appellants regarding the death of husband of the appellant No.1 and the father of the appellant No.2 though decided the entitlement of compensation of the appellants but very wrongly dismissed the suit of the plaintiff-appellants but very wrongly dismissed the suit of the plaintiff-appellants finding that the suit is barred by limitation as per provisions of Section-82 of the Limitation Act.

[10] The learned Court below while followed the methodology of M.V. Act following multiplication of income and the age of the deceased etc, in assessment of compensation but very wrongly ascertained the amount of compensation by wrong consideration of the age and

multiplication and thereby very wrongly and illegally assessed the compensation in the lower side.

[11] The learned Court below ought to have considered that as per the fatal Accident Act the application for compensation while is not being made to District Judge and where there is no Tribunal formed for entertaining the application for compensation under Indian Fatal Accident Act, 1855 made by institution of a Civil Suit in the Civil Court of jurisdiction then option is to be considered and limitation should be followed as per provision of Section-137 of the Limitation Act as three years from the date of death on ascertainment of cause of death by electrocuted.

[12] The learned Court below ought to have considered that the suit of the appellants was very much within limitation period as per provision of Section-137 of the Limitation Act. The learned Court below ought to considered that the suit for damages and compensation for the loss of life and the estate due to the death of husband of the appellant No.1 by electrocution for the negligence of the staff of the department under Senior Manager (Electric) the respondent No.4 would be not less than the amount as claimed as compensation as claimed by the appellants in consideration of the age and income by all sources of the husband of the appellant No.1.

[13] Mr. Gautam, learned counsel appearing for the respondent vehemently opposed and in support of his case has placed reliance upon a decision of the Apex Court in ***Damini and Another v. Managing Director, Jodhpur Vidyut Vitran Nigam Limited and Another***, reported in (2017) 9 SCC 443, wherein, the Apex Court has held thus:

“3. The appellants filed an application under Section-1-A of the Fatal Accidents Act, 1855 before the District Judge, Jaisalmer, Rajasthan claiming Rs.22,68,000/- towards damages. The claim was resisted on the ground of limitation among other grounds.

4. According to the respondents, under Article-82 of the Limitation Act, 1963, the claim should have been presented within two years from the date of death of the person. The contention was upheld and the claim petition was dismissed. The decision was upheld by the High Court as well, and thus, the appellants are before this Court.”

[14] Mr. N. Majumder, learned counsel appearing for the respondent has also opposed on the issue that the appeal is already barred by limitation in terms of the filing of the original suit.

[15] In view of above arguments made by the learned counsel appearing for the parties, for come to a definite conclusion, let us revisit to the depositions of the PWs.

[16] PW-1, Smti. Pappi Debnath (Bhattacharjee) @ Papiya in her oral evidence stated that on 16th day of March, 2017 at about 11:15 hours when her husband was trying to operate the water supply pump of West Lalcheri Gram Panchayat at that time her husband found fault in the power supply. Thereafter, when her husband tried to fix the fuse fitted on the coconut, he got electrocuted. It is further stated that the entire coconut tree was charged with electric energy of high voltage and when her husband came in contact with the coconut tree, he received burn injuries on his body. Thereafter, the matter was informed to the local fire service authority. On receipt of that information, the staffs of the fire service went to the spot and took her husband to Kulai District Hospital where medical officer declared him brought dead.

[17] PW-2 Shri Bimal Debnath is one of the co-villagers of the appellants and he narrated the same story in his affidavit-in-chief and thereby corroborated the testimony of the appellants regarding the cause of death of the victim.

[18] It has already been stated that the respondents did not adduce any documentary or oral evidence to take a contrary view. Therefore, there should not be any hesitation to bold that the deceased, the husband of the

appellant No.1 and the father of the appellant No.2 has died on 16.03.2017 out of electrocution.

[19] The Hon'ble Apex Court in ***M.P. Electricity Board Vs. Shail Kumar and others***, reported in ***AIR 2002 SC 551*** held that “*the defence that electrocution was due to clandestine pilferage committed by stranger is not available to electricity board. It is no defence on the board of the management of the board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps*”.

[20] In the present case, there is also no such claim is made from the side of respondents. On the other hand, as pointed out above, the PW-1 and PW-2 in their affidavit-in-chief categorically stated that the deceased Prabal Bhattacharjee has died due to negligence and actionable wrong on the part of the defendants. The Final Report (Exbt.8) submitted by the investigating officer in Ambassa police station UD case No. 2017/ABS/004 and the postmortem report (Exbt.10) of the deceased also indicates that the deceased Prabal Bhattacharjee has died out of electrocution. There is no re-vital evidence in this regard. Hence, it can be safely held that the deceased Prabal Bhattacharjee has died due to negligence and actionable wrong of the defendants.

[21] Now, the question is how to calculate the quantum of compensation? In this regard, guidance may be taken from the decision of the Hon'ble Supreme Court, in a very recent decision namely, ***Santosh Devi Vs. National Insurance Company Ltd. & Ors.***, reported in ***2012 (6)***

SCC 421, after referring to the decision in **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.**, reported in **2009 (6) SCC 121** wherein the formula under different headings including the one relating to selection of multiplier was quoted with approval. The said formula has been set out in **Sarla Verma (supra)** in para 42 which reads as under:-

“42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M- 15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

[22] In view of above observations and discussions, this Court is of the opinion that the accident took place on 16th March, 2017 and thereafter, the appellants persuaded their claim before the respondents by way of notice and subsequently, a letter has been issued to the appellants on September, 2017 asking the appellants herein, to furnish certain documents in respect of their claim to which, on October, 2017 the appellants have submitted their documents to the satisfaction of the respondents with an impression that the legitimate expectation of the appellants the respondents would consider the case of the appellants. But the respondents instead acting upon the same have not taken any decision.

[23] However, on sensitizing on the issue of limitation, this Court draws a conclusion that there was no willful delay committed on the part of the appellants more so, when it amounts to awarding of any compensation against a fatal accident and when it is a beneficial legislation which has overriding effect on certain technicalities, this Court gives weight age to the pain and sufferings which has been suffered by the family members of the deceased person and accordingly, the finding given by the learned Court below on the issue No.1 i.e. rejecting the case of the appellants on the ground of delay and laches, stands set aside.

[24] The other issues, wherein the learned Court below has given computation, the Court below has drawn a conclusion that the family members of the deceased i.e. the appellants herein, is otherwise entitled for Rs.5,56,168/- as per computation made by the learned Court below is appreciated and accordingly, the same needs no interference. However, the judgment as cited by Mr. P. Gautam, learned counsel appearing for the respondent has no applicability in the facts and circumstances of case.

[25] In the light of the above, the appeal stands allowed. The observation made in issue No.1 stands set aside declaring that the appellants are entitled for the amount which has been calculated by the learned Court below i.e. Rs. 5,56,168/-. The respondents shall deposit the same within a period of two months from the date of receipt of the copy of this order. It is made clear that, on such deposit, the appellants are at liberty to withdraw the same un-conditionally.

[26] The appeal stands allowed, draw the decree accordingly and send down the LCRs thereafter. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

CHIEF JUSTICE [ACTING]

A.Ghash

