

IN THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.21 of 2022

- 1. Smt. Ravaiti Debbarma,**
wife of late Bikash Debbarma
- 2. Smt. Jagatswari Debbarma,**
mother of late Bikash Debbarma
- 3. Miss. Elina Debbarma (minor),**
daughter of late Bikash Debbarma

-All are residents of village-
Ramkrishna Chowdhury Para, P.S.
Kalyanpur, District- Khowai Tripura

[Appellant No.3 being minor is
represented by her mother namely,
Smt. Ravaiti Debbarma i.e. Appellant
No.1 as her legal guardian]

[Redacted]

..... **Appellant(s)**

- V e r s u s -

- 1. Tripura State Electricity Corporation Ltd.**
represented by Chairman-cum-
Managing Director, Bhuturia near Mara
Chowmuhani, Banamalipur, Agartala,
West Tripura
- 2. The Sr. Manager (Electrical)**
Electrical Sub-Division- Kalyanpur, PO
& P.S. Kalyanpur, District- Khowai,
Tripura

..... **Respondent(s)**

For the Appellant (s) : Mr. K. Pandey, Adv.

For the Respondent (s) : Mr. N. Majumder, Adv.

Date of hearing : 29.08.2024

Date of delivery of Judgment & order : **13.12.2024**

Whether fit for reporting :

YES	NO
√	

**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER

[S. Datta Purkayastha, J]

The appeal arises out of the judgment of dismissal dated 25.03.2021 passed by the learned Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala in Money Suit No.21 of 2018 and the related decree thereof.

[2] The plaintiffs (the appellants herein) lodged the claim of Rs.15,00,000/- averring in the suit that one Bikash Debbarma on 08.09.2016 at about 10.15 hours was going to his uncle's house and on the way at Ramkrishna Chowdhury Para under Kalyanpur P.S., District- Khowai got electrocuted from a live wire lying on the path. Thereafter, with the help of locals, he was detached from the said electrical wire and was taken to Kalyanpur hospital wherein he was declared dead. At the time of said incident, he was stated to be 28 years old and was by profession a day labour and Bargadar who would cultivate the land of others and in total, he would earn Rs.15,000/- per month. It is alleged that said electricity wire was under the management, control and care of Electricity Department and concerning the said incident, one unnatural death case bearing No. Kalyanpur U/D Case No.14 of 2015 was registered under Section 174 of the Code of Criminal Procedure. The present appellants being the wife, mother and daughter respectively of said deceased instituted the suit.

[3] The respondents-Tripura State Electricity Corporation Ltd. [the TSECL in short] in their written statement denied the allegations of lying of live electric wire on the path and electrocution of the deceased therefrom. They also did not admit the age and monthly income of the deceased. By filing an additional written statement, they asserted further facts that after the death of the deceased, the police investigated the matter, recorded statements of local people and relatives of the deceased and submitted the final report stating that on the alleged date of incident, the deceased went to the house of one Santosh Debbarma of Ramkrishna Chowdhury Para for working purpose and when he was trying to start operation of one shallow motor by pressing the switch, he was electrocuted and died on the spot and therefore, they were not responsible for any payment.

[4] During trial, the plaintiff No.1, Smt. Ravaiti Debbarma examined herself as PW-1 and proved certain documents into the evidence. She also examined one co-villager, namely Sri Subal Debbarma as PW-2. From the side of the TSECL, the Sr. Manager of Kalyanpur Electrical Sub-Division, namely Sri Mrinal Kanti Das was examined as DW-1 and he also proved certified copy of the final report of said police investigation [Exbt.A] and certified copy of one FIR [Exbt.B] of that case.

[5] Finally, the learned trial court dismissed the suit mainly on the ground that the final report submitted by the police revealed that the investigating officer had examined the relatives of the

deceased and it transpired that on the alleged date at about 8.30 hours, the deceased went to the house of his uncle, namely Santosh Debbarma of Ramkrishna Chowdhury Para and when he pressed the switch of shallow motor connection, he was electrocuted and died on the spot. Therefore, according to the learned trial court, the deceased did not die from any accident occurred on account of any negligence on the part of the defendant-respondents.

[6] Mr. K. Pandey, learned counsel appearing for the appellants argues that the learned trial court has misread and misinterpreted the evidences as adduced by the plaintiffs and took exceptions of the facts that during cross-examination, PW-1 stated that in connection with death of her husband, police personnel had made an investigation and many persons of their locality were asked about the incident and those persons made statements to the investigating officers relating to the death of her husband as to how the accident had occurred and further stated that whatever the investigating officer had opined in the final investigation report was true about the death of her husband. According to Mr. Pandey, learned counsel, such replies given in the cross-examination itself do not establish that the death was not for any negligent act on the part of the defendants. According to him, the investigating officer was not examined in this case and therefore, there was no scope for the plaintiffs to cross-examine him. Mr. Pandey, learned counsel also submits that one eyewitness of the incident was examined as PW-2 who categorically stated that from the live wire, the deceased

was electrocuted and such substantive piece of evidence concerning the alleged incident was ignored by Ld. Trial Court.

[7] Mr. N. Majumder, learned counsel appearing for the TSECL replies that the final report of the police was proved into evidence by both sides and as per said report, the deceased was electrocuted while using a motor pump and not from any live wire and therefore, the TSECL bears no responsibility to make any payment and the learned trial court was completely justified in dismissing the suit for suppression of material facts by the plaintiffs.

[8] We have given our thoughtful consideration in the matter. Though both sides have proved the police investigation report into the evidence but such investigation report is not substantive piece of evidence regarding the alleged incident. Post-mortem report of the deceased was proved as Exbt.4 from the side of the plaintiffs wherefrom it appears that the Autopsy Surgeon had opined about the cause of the death of the deceased to be secondary asphyxia due to electric current. The defendants are not disputing said post-mortem report. Therefore, it is not disputed that the deceased died due to electrocution. The Sr. Manager, Mr. Mrinal Kanti Das though examined himself in the trial but from his evidence it appears that he was not present at the time of said incident rather he went to the spot later on. The Investing Officer in his police report did not divulge the names of persons from whom he came to learn the above said fact of electrocution of the

deceased in the house of Santosh Debbarma nor he had attached the statements of such witnesses along with his report. Said Santosh Debbarma was also not examined by the defendants. No site map of the place of occurrence was also annexed with the report. Therefore, such report does not bear much significant value regarding said incident. On the other hand, PW-2, a resident of Ramkrishna Chowdhury Para stated that on 08.09.2016 when said Bikash Debbarma was going from his house towards his uncle's house on the way of Ramkrishna Chowdhury Para, he came in contact with a live wire lying on the way. Thereafter, he along with other local people detached Bikash Debbarma from said electric wire with the help of bamboo and he was sent to Kalyanpur Hospital for treatment. In his cross-examination, he however admitted that he did not witness the alleged incident but after the incident, he went and saw the deceased, Bikash Debbarma. He further admitted that the police visited their locality and inquired about the incident from him and others and he informed the police about the said incident. He categorically denied the suggestion that while pressing the switch of electric water pump, he got electrocuted. Nothing is there in the evidence that he was an interested or partisan witness and we do not find any reason to disbelieve him. He in his cross-examination also stated that he had told the police about such incident, but there is no whisper in the police report about his name therein and how the police officer has discarded his statement given to him. Though said witness in his cross-examination also stated that the deceased had gone to the

house of Santosh Debbarma on that day for work, but said fact alone does not establish that the incident occurred in that house.

[9] PW-1 is a rustic tribal lady also similarly deposed that the electric wire was detached from the electric pole installed by the power department and due to negligence and carelessness of the TSECL that wire was lying on the path. She did not claim to be an eyewitness of the incident and just because she in her cross-examination stated that the opinion of the investigating officer was true, neither her entire evidence can be discarded nor any extra importance can be given to the said police investigation report. PW-1 also categorically denied the suggestion that her husband while going to start the electrical motor in the house of Santosh Debbarma was electrocuted therein. It appears that the learned trial court has given over emphasis on the said investigation report of unnatural death case. The defendants to fortify such report of the investigating officer did not examine any witness of the incident including said Santosh Debbarma to show that such report was correctly submitted by the police.

[10] It is settled position of law that final investigation report forms a mere opinion of the Investigating Officer on the materials collected by him. The Investigating Officer filed the final report before the Court under Section 173(2) of the Cr.P.C. It being a report is not a substantive piece of evidence. The truthfulness of the report will only be decided by the court.

[11] In the case in hand, the statements in the plaint are very clear as to how the husband of the plaintiff No.1 got electrocuted. More so, PW-1, the wife of the deceased has categorically deposed in her chief examination that her deceased husband on his way to Ramkrishna Chowdhury Para, came in contact with a live wire lying on the way though she was not the eyewitness to the incident. However, PW-2, a resident of the same locality, reiterating and supporting the statement of PW-1 deposed that he along with other local people detached Bikash Debbarma, the deceased, from the said electric wire with the help of bamboo and the deceased was sent to Kalyanpur hospital for treatment. Though PW-2 was not an eyewitness to the incident, but, he stated that after the incident he went there and saw the deceased. It is true that non-examination of the investigating officer is not always fatal, but, in the nature of the present case, the examination of the Investigating Officer is very much necessary. We find that no explanation has been offered as to why the Investigating Officer was not brought to the witness box. There is yet another important aspect of the case that the learned trial Judge has failed to appreciate the settled law that mere exhibiting a document by a person does not mean that the contents of such document are proved, unless and until such contents are proved by the maker/author of the said document. According to the learned trial Judge, since the final investigation report was brought on record and exhibited at the instance of the plaintiff No.1, Smt. Ravaiti Debbarma herself, it amounts to an admission of the contents of

the report. It is settled proposition that admission must be clear and explicit. In the instant case, we find that PW-1, the wife of the deceased, is a rustic villager. Neither the learned trial Judge nor the defendants narrated the contents of the police report during deposition before the court, to say it otherwise, she was not aware of the contents made in the final police report submitted by the Investigating Officer. According to us, mere statement of PW-1 in her cross-examination that 'whatever the Investigating Officer had opined in the final investigation report was true about the death of her husband', will not throw out the evidence given by her in her chief examination.

[12] In case of **Chikkam Koreswara Rao vs. Chikkam Subba Rao and Ors.**, reported in **AIR 1971 SC 1542**, the Hon'ble Supreme Court observed thus:

"7. This admission must be read along with the evidence given by him in his chief-examination

8. If we read this statement along with other evidence and in a harmonious manner, it is clear that what the appellant admitted was that the acquisition in was made by his father on his behalf and the consideration for the same was paid by his father from out of the appellant's private funds"

Thus, the Supreme Court has pointed out that *"before the right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive and there should not be any doubt or ambiguity about the alleged admission and to examine whether there is ambiguity in the admission, it would be necessary for the court to read the other parts of the*

evidence and the stand taken by him in the pleadings. Considering in that way, as pointed out above, it becomes obvious that the so called admission is not admission at all. It is a statement made out of knowledge. Hence, it does not help the case of the respondent. Thus, we are satisfied, looking into the stand taken by the respondent in the proceeding and the manner in which he has disposed, having least regard for the truth, that the so called admission and suggestions put by the counsel for the petitioner would not render the marriage invalid. The evidences on record are neither clear nor ambiguous nor reliable. Hence, the initial presumption arising from the facts of the case is not at all rebutted by the respondent. Hence, we are constrained to hold that the marriage is legal and valid and that the petitioner has the status of wife of the respondent."

[13] Keeping in mind the aforesaid principle, if we evaluate and assess the evidence of PW-1 in the present case, we find that the contents of the report were not disclosed to her [as we stated earlier]. This type of admission, without knowing the contents, by PW-1 suffers from ambiguity and cannot be considered as conclusive. Furthermore, this so-called admission is not admission at all. Hence, we are constrained to hold that the statement made by PW-1 during her cross-examination admitting the police report about the factum of death of her husband has no evidentiary value, being neither clear nor unambiguous and reliable. Such isolated statement cannot have any evidential value for deciding the suit.

[14] The learned trial Judge has committed serious error in dismissing the suit of the plaintiffs simply on the basis of such ambiguous statement without considering the other parts of the evidence led by the plaintiffs' side and the stand taken by the plaintiffs in their pleadings.

[15] It is not disputed that all the electrical poles of public distribution system of power supply to the private individuals lies with said TSECL and therefore, it is their duty to maintain each and every electrical line properly and carefully so that no mishap occurs from such electrical connection. In case any person is electrocuted resulting to his death or injury, for want of such proper care and caution, the department shall obviously be held responsible on the doctrine of *res ipsa loquitur*. In **Ravi Kapur vs. State of Rajasthan, (2012) 9 SCC 284**, the Apex Court has observed that the court is required to adopt one parameter of 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrians happen to be children of tender years. It was also further observed that while driving a vehicle on a public way, an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or the pedestrians.

[16] While describing the general principles of law of negligence, the Apex Court in that case also cited reference of **Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p.3)** in the following terms:

"9.....1. General principles of the law of negligence.— Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two."

[17] In the case in hand, the evidence from the defendants side is lacking on the point that they were vigilant and took reasonable care of the electricity line extended by them for such electrical power supply in that locality. They have not even produced any register of their office maintained for day to day business regarding the entry made therein in respect of receipt of the information of the said electrical incident and the result of their inquiry, if any. In fact, the DW.1 categorically stated in his cross-examination that on being informed he had visited the spot, which

indicates that they had information of such incident and therefore, it is obvious that they had maintained certain records of the same. Withholding of such vital documents creates a space for drawing adverse inference.

[18] In view of the above said discussions, it is held that the plaintiff-appellants are entitled to get some compensation. According to the plaintiffs, the deceased was aged about 28 years of old, earning Rs.15,000/- per month being a day labour and also being a Bargadar. No document regarding Bargadarship is proved by them. Even there is no concrete evidence adduced from the side of the plaintiffs regarding the age and monthly income of the deceased. However, in the post-mortem report, his age is reflected to be 28 years which is supported by the police investigation report too and in absence of any other concrete evidence on that point, his age is taken to be 28 years.

[19] Mr. Pandey, Ld. Counsel relies on a general guideline regarding settlement of compensation of MAC cases in Lok Adalat issued by the High Court on 04.08.2023 in the administrative side wherein it was reflected that monthly income of unskilled workers was to be taken as Rs.8,000/- per month in absence of any income proof for the purpose of determination of compensation where the accident had taken place on or before 31.12.2015. Originally another such notification was issued on 09.01.2017 after a meeting was held with all the concerned Insurance Companies, with their agreement and in modification of the same, second notification

dated 04.08.2023 was issued. Such notifications were therefore issued in different contexts.

[20] In absence of any satisfactory evidence led by the plaintiffs, per day income of the deceased as a day labour living in a interior rural area is taken to be Rs.250/- during the year 2016. Even if it is presumed that he would get job for 22 days in a month, his monthly income comes to be Rs.5,500/-. One third is deducted therefrom for his personal and living expenses and loss of dependency per month is counted to be Rs.3,667/-. Considering the age of the deceased, multiplier 17 is required to be applied. Therefore, the compensation is assessed at $(Rs.3667 \times 12 \times 17) = Rs.7,48,068/-$ rounded off to Rs.7,50,000/- taking into consideration of funeral expenses and other rituals. Therefore, total compensation is calculated at Rs.7,50,000/- [Rupees Seven lakh Fifty thousand] only.

[21] The appeal is accordingly allowed and disposed of on contest. It is held that the plaintiffs are entitled to get compensation of Rs.7,50,000/- [Rupees Seven lakh Fifty thousand] only along with interest @6% per annum from the date of filing of the suit i.e. 04.07.2018 till payment. The defendants are jointly and severally held responsible for making such payment with interest at the earliest.

After such amount is paid or deposited, one fourth shall be distributed to the plaintiff No.2, Jagatswari Debbarma and rest shall be equally distributed between the plaintiff No.1, Smt. Ravaiti

Debbarma and the plaintiff No.3, Miss. Elina Debbarma. The entire share of the plaintiff No.3, Miss. Elina Debbarma shall be kept in a fixed deposit till she attains the age of 18 years, however plaintiff no.1 will be entitled to draw periodical interest therefrom for her up-brining. 50% portion of the compensation payable to the plaintiff No.1, Ravaiti Debbarma shall be kept in fixed deposit for 05[five] years in any nationalised bank and rest amount shall be disbursed to her through her bank account. Plaintiff no.1 will also be entitled to draw periodical interest from her own fixed deposit for her living expenses.

No order as to costs.

Return the trial court's records.

Registry is to prepare the decree accordingly.

Pending application(s), if any, also stands disposed of.

JUDGE

JUDGE

SUJAY GHOSH Digitally signed by SUJAY GHOSH
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