



S.A.No.1545 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2024

PRONOUNCED ON : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1545 of 2010

1. Rajambal

2. Murugesan

3. S. Kavitha

...

Appellants

Vs.

1. President,
Tamilnadu Electricity Board,
Chennai.

2. The Superintending Engineer,
(Mettur Electricity Division)
T.N.E.B., Namakkal.

3. Administrative Engineer,
(Operation & Maintenance),
T.N.E.B., Namakkal.

4. Assistant Administrative Engineer,
(Operation & Maintenance),
T.N.E.B., Sendamangalam,
Now at Kalappanaickenpatti



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5. Assistant Engineer,
(Operation & Maintenance),
TNEB ., Sendamangalam North,
Now at Karavalli.

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.06.2010 passed in A.S.No.4 of 2010 on the file of the Principal District Judge, Namakkal in reversing the well considered Judgment and decree dated 25.08.2009 made in O.S.No.141 of 2008 on the file of the Subordinate Judge, Namakkal.

For Appellant : Mr. R.V.Agilan,
for Mr.C.Jagadish

For Respondents : Mrs. J. Hemalatha Gajapathy

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.06.2010 passed in A.S.No.4 of 2010 on the file of Principal District Judge, Namakkal, reversing the Judgment and Decree dated 25.08.2009 passed in O.S.No.141 of 2008 on the file of Subordinate Judge, Namakkal.



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2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The plaintiffs in O.S.No.141 of 2005 on the file of the Subordinate Court, Namakkal, is the appellants in this second appeal. The first plaintiff is the wife and the plaintiffs 2 and 3 are children of the deceased Natesan @ Natarajan. They filed the suit for compensation for a sum of Rs.5 lakhs with interest at 12 % p.a., for the death of the deceased Natesan @ Natarajan due to electrocution. The deceased Natesan @ Natarajan was cultivating lands as a cultivating tenant in the lands of one Kamalasekaran. On 13.12.2006, while he was cutting plantain tree in Survey No.172/2 belonging to one Manjunathan, electricity line running over the field touched the planted leaf and thereby, he was electrocuted and he died. Electrocution was occurred only due to the negligence of the Electricity Board and also the high tension in the electric wires hae not properly maintained by the Electric Board and only because of their negligence and their inadvertance in maintaining the wires the electrocution occurred. This incident took place because of the electrical line touching the plantain tree. Hence, the suit.



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4. The respondents/defendants filed written statement denying the allegations and averments as contained in the plaint besides contended that the incident had not occurred due to the fault of the Electricity Board and they had properly maintained the electricity lines and only due to the negligence of the deceased the incident occurred and hence, they are not liable to pay any compensation and thus, pleaded to dismiss the suit.

5. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

- 1. Whether the incident on 13.12.2006, i.e., the electrocution had happened only due to the negligence of the defendants?***
- 2. Whether the plaintiffs are entitled for compensation for a sum of Rs.5,00,000/-?***
- 3. To what relief?***



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6. Before the Trial Court, in support of the plaintiff's case, the first plaintiff examined herself as PW1 and One Selvi and Sundaram examined as P.W.2 & P.W.3 and 7 documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, one Sujatha, the fourth defendant examined as DW1 and no documents were marked on the side of the defendants.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court awarded a compensation of Rs.4,32,000/- to the plaintiffs.

8. Aggrieved over the same, the plaintiffs have preferred the First Appeal in A.S.No.4 of 2010 before the Principal District Court, Namakkal. The First Appellate Court, after considering the entire materials, fixed 50% contributory negligence on the part of the deceased and 50% negligence on the part of the Electricity Board. Apart from that, the First Appellate Court reduced the compensation to Rs.2,64,000/-. Now, challenging the same, the present Second Appeal has been filed.



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9. The second appeal has been admitted on the following substantial question of law:

- 1. Whether the Lower Appellate Court was right in holding that there is no negligence on the part of the deceased in cutting trees when it is the duty of the respondents to maintain the transmission line in proper condition ?*
- 2. Whether the Lower Appellate Court was right in reducing the compensation awarded to 50% on contributory overlooking negligence the admission of DW1 about the omission of their duty to maintain the electricity lines in order and Ex.A7 which shows the improper maintenance ?*
- 3. Whether the Lower Appellate Court was right in fixing the income of the deceased holding sufficient evidence when PW1 to PW3 had been examined to show the income of the deceased from agriculture?*
- 4. To what relief?*



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10. The learned counsel appearing for the appellants contended that the the First Appellate Court erred in holding that there is negligence on the part of the deceased while cutting the plantain tree though there is no evidence to that effect and without any evidence, the learned First Appellate Judge fixed negligence upon the deceased and the land owner and without any evidence, reduced the compensation and failed to consider the evidence of P.W 1 to P.W.3 to prove the income of the deceased through the agricultural work and further, the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the second appeal.

11. The learned counsel appearing for the respondents supported the judgment of the First Appellate Court and there is no error in the finding and since there is no substantial question of law involved in this case, this Second Appeal is not maintainable and thus, pleaded to dismiss the appeal.

12. From the facts, it is seen that the deceased Natesan @ Natarajan was cultivating lands as a cultivating tenant in the lands of one Kamalasekaran. On 13.12.2006, while he was cutting plantain tree in Survey No.172/2 belonging to



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one Manjunathan, electricity line running over the field touched the plantain leaf and thereby, he was electrocuted and he died.

13. The First Appellate Court in paragraph 13 of the judgment discussed about the incident and fixed contributory negligence upon the deceased and the land owner, for which, there is no evidence on record. The evidence of P.W.1 to P.W.3 and D.W.1 did not reflect any fault upon the deceased. The First Appellate Court failed to consider the contention of the defendants in the written statement filed by them. In the written statement, in paragraph 10, the defendants admitted that the electrical lines fell on the plantain tree. For better appreciation paragraph Number 10 of the written statement is reproduced hereunder:

“ 10, உண்மையில் வாழ்வந்தி கிராம ச.எண்.172/2ல் ம சுநாதன் என்பவருக்கு பாத்தியப்பட்ட நிலத்திற்கு அருகில் உள்ள நிலத்தில் விவசாயம் செய்து வந்தார். மேற்படி சம்பவ தினத்தன்று இடி, மின்னலுடன் பலத்த மழை பெய்து கொண்டிருந்தது. அப்பொழுது தமிழ்நாடு மின்சார வாரியத்திற்கு சொந்தமான தாழ்வழுத்த மின்கம்பி மேற்படி மஞ்சநாதனுக்கு பாத்தியப்பட்ட ச.எண்.172/2 நிலத்தில் உள்ள வாழை மரத்தில் அறுந்து மோதி கொண்டிருந்தது. அப்பொழுது நடேசன் (எ) நடராஜன் கவனக்குறைவாக மேற்படி மஞ்சநாதனுக்கு பாத்தியப்பட்ட ச.எண்,172/2ல் உள்ள நிலத்தில் வாழை மரத்தை நடேசன் (எ) நடராஜன் வெட்டும் போது மின் கம்பி அறுந்து கிடந்ததை கவனிக்காமல் வெட்டியதால்தான்



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மின்சாரம் தாக்கி இறந்துவிட்டார்.”

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14. Electricity Board being the suppliers of electricity are expected to control the supply system and when the electrical line has fallen due to rain and storm, it is the duty of the Electricity Board to take action for repairing the electrical lines. When an incident happens involving electrical line, inference can surely be drawn that there has been an element of carelessness on the part of the Electricity Board in maintaining the supply line. The onus is heavy on the Electricity department to absolve themselves from the charge of negligence. In this case, there is no evidence on the part of the Electricity Board for taking immediate action to avoid such incident. Under these circumstances, without any evidence, fixing contributing negligence upon the deceased and the land owners is perverse one. Apart from this, the fixing of income of the deceased as Rs.3000/- per month is not supported by any evidence. The First Appellate Court without any evidence reduced the compensation fixed by the Trial Court and this also is perverse one. Therefore, fixing negligence on the part of the deceased and the land owner is erroneous one and also reducing the compensation is also erroneous one. In the absence of any evidence available, contributing negligence on the part of the deceased by overlooking the evidence of P.W.1 to P.W.3, the First Appellate Court fixed the income of the



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deceased as Rs.3,000/- per month is also perverse one .

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15. In view of the above, the finding of the First Appellate Court is liable to be set aside and the judgment and decree of the Trial Court dated is liable to be restored. and the substantial question of law formulated in the second appeal is, accordingly, answered in favour of the appellants/plaintiffs.

16. For the aforesaid reasons, the second appeal is allowed and the judgment and decree passed by the First Appellate Court is set aside and the judgment and decree passed by the Trial Court is restored. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

28.06.2024

mrp

To

1.The Principal District Court,
Namakkal.

2.The Subordinate Court,
Namakkal.



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V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.1545 of 2010

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