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A.S.No.78 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.78 of 2014

1. The Junior Engineer/O&M,
Tamil Nadu Electricity Board,
Anthiyur Town.
 2. The Assistant Executive Engineer/O&M,
Tamil Nadu Electricity Board,
Anthiyur Town.
 3. The Executive Engineer / O & M,
Tamil Nadu Electricity Board,
Anthiyur Town.
 4. The Superintending Engineer / O & M,
Tamil Nadu Electricity Board,
Anthiyur Town.
- ... Appellants

Vs.

1. Pavaye
2. Minor Priya
3. Minor Prabhu

(Respondents 2 and 3 are minors rep by
their mother and guardian Pavaye,
the first respondent herein)



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4. Rasamma
5. Ramasamy
6. Marappa Gounder
7. Yoganathan
8. Rajammal

... Respondents

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 31.03.2006 made in O.S.No.36 of 2094 on the file of Fast Track Court No.4, Bhavani at Erode District.

For Appellants : Ms.J.Hemalatha

For Respondents : Mr.N.Manokaran for R1 and R4
R2 and R3 – Minors rep by R2
Not ready in notice -R5 to R8

JUDGMENT

The defendants 5 to 8 have challenged the judgment and decree passed by the learned Additional District Judge, Fast Track Court No.4, Bhavani at Erode District in O.S.No.36 of 2004.

2. The facts are briefly set out herein below with the parties being referred to in the same ranking as before the trial Court.



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3. The plaintiffs had filed the above suit for recovery of a sum of Rs.9,36,880/- as damages for the death of one Moorthy, who is the husband of the first plaintiff, the father of plaintiffs 2 and 3 and the mother of the fourth plaintiff, due to electrocution.

4. It is the case of the plaintiffs that the said Moorthy was an agricultural coolie earning a sum of Rs.75/- per day. It is with this income that he has been taking care of the family. The first plaintiff would submit that her husband was always employed through the year as the lands around Kollampalayam and Andhiyur had perennial water sources and agricultural activities were being carried throughout the year.

5. It is the case of the plaintiffs that on 06.12.1998, the said Moorthy had gone to work in the first defendant's field, where he was asked to cut down the trees that had grown in the vacant poromboke lands. On 12.12.1998, when the said Moorthy was proceeding to the said vacant land to collect the cut firewood, he got electrocuted by the electric fence that had been put up by the



defendants 2 to 4 who had taken out the first defendant's property on lease. The said Moorthy passed away. Moorthy's brother, Ravi and one Ramasamy were also going along with the deceased Moorthy. They had seen the death of Moorthy and had intimated the first plaintiff about the same. They had immediately lodged a complaint with the Andhiyur Police Station on 12.12.1998 against the defendants 2 to 4. The plaintiffs would further submit that the defendants 5 to 8, by supplying electricity to this illegal line, were also vicariously liable. Therefore, the plaintiffs have come forward with the suit in question, making the defendants jointly and severally liable, the first defendant being the owner of the land, defendants 2 to 4 being the lessees and the defendants 5 to 8 being the Electricity Board which has supplied the electricity.

6. The first defendant remained *ex-parte*. The second defendant had filed a written statement which was adopted by the defendants 3 and 4. It was their contention that the first plaintiff had got remarried and through the remarriage, a child was born to her and that the first plaintiff is living along with her second husband.



Therefore, she is not entitled to any compensation. Further, a criminal case that has been filed against these defendants in C.C.No.50 of 2000 has been dismissed and they have been released. That apart, they would submit that the suit was barred by limitation. They would submit that they are not liable to pay the compensation.

7. The 6th defendant had filed a written statement, which was adopted by defendants 5, 7 and 8. These defendants had put the plaintiffs to strict proof that they are the wife, children and the mother of the deceased Moorthy. They would submit that the linesmen belonging to the Department were constantly inspecting the the electricity connections that had been given by the Board to various consumers They would also undertake in the meter reading, which was being taken once in two months. They would also cross check if the electricity connection was being utilized for the purpose for which it has been availed. The plaintiffs have not set out the distance between the service connection and the fence where the accident has taken place and the distance to which the wire had been drawn to connect to the fence. The first defendant's meter was being



periodically checked and the same was not used for agricultural purposes. They have also not proved that the said Moorthy had died due to electrocution. These defendants are not responsible as they have not committed any negligent act. Therefore, they sought to have the suit dismissed.

8. The trial Court had framed the following issues:

1. வாதிகளுக்கு 1 முதல் 8 பிரதிவாதிகளிடமிருந்து தனித்தனியாகவும் கூட்டாகவும் ரூ.9,36,880/- 12% வீதம் வட்டியுடன் பிராதில் கோரியபடி கிடைக்கக்கூடியதா?
2. 1ம் வாதி இறந்தபோன மூர்த்தி வாரிசு இல்லையா?
3. வாதிகள் 2 முதல் 4 பிரதிவாதிகள் பேரில் எந்தவித நஷ்டஈடும் கோர முடியாதா?
4. இந்த வழக்கு கால வரையறை சட்டத்தால் பாதிக்கப்பட்டுள்ளதா?
5. வாதிகளுக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன?



9. The first plaintiff had examined herself as P.W1 and one Ravi as P.W2 and marked Exs.A1 to A5. The defendants had examined the third defendant as D.W1, one Marappan as D.W2 and K.M.Balasubramaniam as D.W3 and marked Exs.B1 to B5. Ultimately, the trial Court had decreed the suit. The trial Court held that the accident had occurred only on account of the negligence of the first defendant. The learned Judge also observed that defendants 5 to 8 have also been negligent in manning the electrical lines. The learned Judge, after deducting the expenses, fixed the compensation of Rs.2,80,800/- together with 7.5% interest from the date of the institution of the suit till the date of the payment. Challenging the said judgment and decree, the defendants 5 to 8 are before this Court.

10. The point for consideration is “*whether the defendants 5 to 8 are liable to pay the compensation when the line is admittedly an illegal electrical line?*”



11. Ms.J.Hemalatha, learned standing counsel appearing for the Electricity Board had relied upon the judgment of the Hon'ble Supreme Court reported in **(1999) 9 SCC 21 [W.B.State Electricity Board and Others Vs. Sachin Banerjee and Others]**. The ratio of the above case would squarely apply to the facts of the instant case since, admittedly, the line in question is an illegal one. She would therefore submit that the order be set aside and the appeal be allowed on this ground.

12. Mr.N.Manokaran, learned counsel appearing for respondents 1 and 4 would submit that as an interim measure, the Board was directed to deposit a sum of Rs.2,05,000/- and the plaintiffs had also withdrawn the said sum. Further, the plaintiffs come from the poor background and will not be in a position to refund the amount already paid.

13. Heard the learned counsels on both sides and perused the materials available on record.



14. Admittedly, the electrocution had taken place on an electric fence, which is unauthorized and for which no prior permission was obtained from the Department. The Hon'ble Supreme Court, in the judgment referred to by the learned counsel for the appellants, has observed as follows:

“Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioner cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently”.

The Hon'ble Supreme Court had thereupon deleted the finding that the electricity Board was negligent. The case on hand is also a case where the defendants 1 to 4 have clandestinely fitted the electric fence and have illegally supplied the electricity to this electric fence. The electrocution has taken place on this fence, which is an illegal line. The appellants / defendants 5 to 8 have not been negligent and therefore not liable to pay compensation to the plaintiffs. Therefore,



A.S.No.78 of 2014

the claim against the defendants 4 to 8 on the ground that they have been negligent cannot be countenanced, especially in the light of the above referred judgment of the Hon'ble Supreme Court. Therefore, the first appeal has to necessarily be allowed and the order set aside insofar as the defendants 4 to 8 are concerned. However, the amount deposited by the Board has already been withdrawn by the plaintiffs and it is also submitted that the plaintiffs will not be in a position to repay the said sum. The Board is also aware of the same and on a humanitarian ground is ready to forego this amount. Therefore, without directing the refund of the said amount, the appeal is allowed. The order of the Court below is set set aside and the finding that the Electricity Board is negligent is set aside. There shall be no order as to costs.

25.04.2024

Index : Yes/No

Internet : Yes/No

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To

1. The Principal District Judge,
Fast Track Court No.4, Bhavani at Erode District.

2. The Section Officer,
V.R. Section, High Court, Madras



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P.T. ASHA, J,

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