

HIGH COURT OF TRIPURA

AGARTALA

RFA No.11 of 2025

Master Sushan Chanda,

S/o Sri Sanjoy Chanda, Resident of Madhya Nayapara, Dharmanagar,
North Tripura, Pin-799250.

(The plaintiff being minor, is represented by his father

Sri Sanjoy Chanda,

S/o Late Sasadhan Chanda, Resident of Madhya Nayapara, Dharmanagar,
District – North Tripura, Pin-799250.)

.....Appellant(s);

V E R S U S

1. The Tripura State Electricity Corporation Ltd,

Notice to be served upon the Chairman-cum-Managing Director, Bidyut
Bhavan, North Banamalipur, Agartala, West Tripura, Pin-799001.

2. The D.G.M,

Tripura State Electricity Corporation Ltd, Dharmanagar, North Tripura, Pin-
799250.

3. The Senior Manager,

Tripura State Electricity Corporation Ltd, Dharmanagar, North Tripura, Pin-
799250.

.....Respondent(s);

For Appellant(s)

: Ms. Sudipta Chowdhury, Advocate.

For Respondent(s)

: Mr. Kushal Deb, Advocate.

Date of hearing and delivery of
Judgment and Order

: **25.03.2026.**

Whether fit for reporting

: YES.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT AND ORDER (ORAL)

[Dr. T. Amarnath Goud, J]

Heard Ms. Sudipta Chowdhury, learned counsel for the
appellant-plaintiff and Mr. Kushal Deb, learned counsel for the respondents-
defendants.

[2] This present appeal is filed under Section 96 of the Code of Civil Procedure, 1908 read with Order 41 of Code of Civil Procedure, 1908 against the impugned judgment and decree dated 23.08.2024 passed by the learned Civil Judge (Senior Division), Court No.2, Dharmanagar, North Tripura, in connection with Money Suit No.01 of 2021 wherein the learned Court below granted compensation of Rs.30,017/- against the compensation sought for by the appellant to the tune of Rs.20,00,000/-.

[3] The brief fact of the prosecution case as projected in the judgment of the learned Trial Court is that the appellant-plaintiff is a boy of 12 years of age (on the date of filing of the suit in the Trial Court) who is a citizen of India reading class-VI at DNV School, Dharmanagar. He, being a minor, is represented by his father in the suit. On 03.10.2018 at about 0930 hours, the appellant-plaintiff was returning to his house from a shop and when he reached near Nayapara Juri Bridge (College Road), suddenly he came in contact with Electrical HT Kiosk Box of UG cable situated just beside the road-side which had been kept in open condition by the respondents-defendants in the most negligent manner. Prior to the aforesaid incident, local people of Nayapara, College Road had informed the respondents-defendants about the open Transformer Box and another accident had taken place in relation to the said box earlier, but the respondents-defendants did not take any precaution. After getting contact with the said open Transformer Box, the appellant-plaintiff received severe injury in his hand and other parts of his body. Local people shifted him to Dharmanagar District Hospital where Dr. N. H. Bhowmik treated him and opined in his report that the injury was severe caused by electric burn approximately 30 percent. He referred the appellant-plaintiff for better

treatment and the appellant-plaintiff was accordingly taken to the Silchar Medical College and Hospital, Assam by his parents. There, he was treated as an indoor and an outdoor patient for more than six months and at the time of filing of the suit, he was under medical treatment. Due to the aforesaid injury, he was unable to move his hand frequently. The appellant-plaintiff's father filed a complaint against the respondents-defendants at Dharmanagar PS which was registered as 2018DMN158 dated 07.10.2018 under sections 285/338 of IPC. After investigation of the said case, the IO clearly stated in his report that after the aforesaid incident when he visited the place of occurrence, he found that the HT Kiosk Box of UG cable had been dangerously and most negligently kept open by the road-side without any precaution. The said fact had also been confirmed by the letter given by Er. Sanjib Dasgupta to the IO of the aforesaid case wherein he specifically stated that when he visited the place of occurrence with his Manager, he found the said HT Kiosk Box of UG cable in open condition. The IO of case no. 2018DMN158 mentioned the said fact in his Final Report. The appellant-plaintiff of the suit thus, received severe injuries due to negligence of the respondents-defendants and as such, the respondents-defendants are jointly liable under the law of Torts to pay compensation to him. The plaintiff was a student of class-IV at DNV School, Dharmanagar at the time of the alleged incident. Due to the alleged incident, he has been unable to move his hand properly and also been unable to remember many things. It was the duty of the respondents-defendants to regularly observe the Transformer Box and they failed to perform such duty. For the purpose of treatment of the appellant-plaintiff, his father had to take loan. At the time of filing of the suit also, the appellant-plaintiff was under treatment and his career prospects got hampered. On 24.06.2020 the appellant-plaintiff sent

advocate's notices upon the respondents-defendants under section 80 of CPC claiming compensation of Rs.20 lakhs, but the respondents-defendants did neither pay compensation to him nor reply to his notices. Therefore, being compelled, the appellant-plaintiff filed the suit. With this, the plaintiff prayed for a decree of compensation of Rs. 20 lakhs with interest at the rate of 12% per annum on the awarded amount from the date of the incident till the date of payment. He also prayed for the costs of the suit and any other relief(s) as the Court may deem fit.

[4] On institution of the suit, summonses were issued to all the defendants. The defendant no. 1 did not file written statement, but participated in trial. On the other hand, the defendant nos. 2 and 3 appeared through learned engaged counsel and filed joint written statement. They also participated in trial. In their written statement, the defendant nos. 2 and 3 stated that the instant suit is not maintainable under the Fatal Accidents Act, 1855. They also stated that the instant suit suffers from the defect of non-joinder of necessary parties and there is no valid cause of action for filing the same. The defendant nos. 2 and 3 denied the fact of taking place of the alleged incident on 03.10.2018 and claimed that it was falsely alleged by the appellant-plaintiff to damage their reputation. They claimed that the appellant-plaintiff fabricated a story to extract compensation from them unlawfully. The Kiosk Box in question was situated much away from the road track and as such the appellant-plaintiff could not clarify as to how he had come in its contact. The Kiosk Boxes are kept locked with electrical shock. Electrical shock may take place only when one intentionally puts his hand inside the same for any mischievous purpose or for foolish curiosity ignoring the danger sign. Thus, in the alleged incident, there was no negligence on the part of the respondents-

defendants and if the appellant-plaintiff at all received some injury, it was because of his mischief, negligence or delinquency. The Final Report filed by the IO in the case filed by the appellant-plaintiff was inconsistent though it clearly put forward the findings that the alleged incident was accidental in nature and no negligence was established against the Electric Department. The respondents-defendants always remain careful in performing their duties. The appellant-plaintiff falsely alleged that previous complaint by the local people had not been attended by them. In fact, there was no call in the records for the date 03.10.2018 with regard to the Kiosk Box in question. Thus, there was no negligence on the part of the respondents-defendants with regard to the injury caused to the plaintiff. Want of report of the Electrical Inspector (statutory authority for electrical safety inspection) made the claim of the plaintiff inadmissible. With this, the defendant nos. 2 and 3 prayed for dismissal of the instant suit.

[5] Thereafter, hearing both the sides and also considering the matters in the record, the learned Trial Court framed the following issues:

- i. Whether the suit is maintainable in its present form and nature?
- ii. Whether there is a valid cause of action for filing the suit?
- iii. Whether there was negligence on the part of the defendants in fixing and maintaining the HT Kiosk box of UG cable at the relevant place?
- iv. Whether there was contributory negligence of the part of the plaintiff?
- v. Whether the injuries, including psychiatric injuries, allegedly caused to the plaintiff were the proximate and direct effects of the alleged negligence by the defendants?

vi. Whether the plaintiff is entitled to the relief(s) as prayed for? If yes, what should be the quantum of the same?

vii. Whether the plaintiff is entitled to any other relief(s)?

[6] After examining all the witnesses and exhibited documents as well as hearing both the parties, the learned Court below vide its judgment and decree dated 23.08.2024 dismissed the suit of the appellant-plaintiff and granted compensation of Rs.30,017/- against the compensation sought for by the appellant-plaintiff to the tune of Rs.20,00,000/-.

[7] Being aggrieved and dissatisfied with the impugned judgment and decree dated 23.08.2024 passed by the learned Trial Court in Money Suit No.01 of 2021 the appellant-plaintiff filed this instant appeal seeking the following relief(s):

“(a) Admit the appeal;

(b) Call for the records from the Ld. Courts below;

(c) Issue notice upon the respondents; and

(d) After hearing the parties would further be pleased enough to set aside the judgment dated 23.08.2024 and decree dated 23.08.2024 passed by the Ld. Civil Judge (Sr. Div), Court No.2, Dharmanagar, North Tripura in Money Suit No.01/2021;

AND

(e) Pass order for allowing the appeal against the impugned judgment dated 23rd Day of August, 2024 and decree dated 23rd Day of August 2024 passed by the Ld. Civil Judge (Sr. Div), Court No.2, Dharmanagar, North Tripura in Money Suit No.01/2021 till disposal of the appeal

[8] Learned counsel, Ms. Sudipta Chowdhury, submits that learned Trial Court has committed error in law and facts in passing the respective judgment and decree, and therefore, interference of this Court is required for the ends of justice. It is contended by the learned counsel, Ms. Chowdhury, that the Trial Court failed to appreciate the continuing nature

of the cause of action, as the appellant's injuries required ongoing medical treatment. The learned Trial Court did not adequately evaluate the clear evidence of negligence on the part of the respondents-defendants regarding the unsafe condition of the electrical kiosk. The testimonies of eye witnesses along with the investigating officer's report, unequivocally established that the kiosk box was negligently left open. Furthermore, the learned Trial Court overlooked substantial evidence establishing the respondents' negligence, indicating systemic negligence in maintenance and supervision. The hazardous condition of the HT Kiosk Box, which was under the exclusive control and maintenance of the respondents, inherently establishes prima facie negligence. The burden of proof, therefore, rested on the respondents to disprove their liability, which they failed to do. It is also submitted that the appellant-plaintiff provided medical records and eyewitnesses testimonies confirming that the injuries were caused by electrocution from the open HT Kiosk box. The evidence clearly established a direct link between the respondents' negligence and appellant's injuries. Therefore, there was negligence on the part of the respondents-defendants in fixing and maintaining the HT Kiosk Box of UG cable at the relevant place. Learned counsel further submits that the Trial Court failed to consider critical evidence, including certified copies of the final police report and testimonies from independent witnesses. This evidence corroborated the appellant-plaintiff's claim that the HT Kiosk Box was negligently left open, directly resulting in the accident and injuries.

[9] Learned counsel, Ms. Sudipta Chowdhury, further submits that the awarded amount is insufficient given the circumstances of the case and the evidence presented. Furthermore, it is argued that the learned Trial

Court failed to adequately consider the key factors for determining the compensation that would justify a higher compensation. In light of these arguments, the appellant seeks a reevaluation of the evidence, emphasising the need for a more comprehensive assessment of the damages incurred. The learned counsel believes that a fair review could lead to an adjustment in the awarded amount to better reflect the true extent of appellant-plaintiff's losses.

[10] On the contrary, learned counsel, Mr. K. Deb, opposes the submissions made on behalf of the appellant-plaintiff and submits that the observations and decisions made by the learned Trial Court is based upon the evidences on record and the same is just and proper which needs no further interference by this Court. Learned counsel, Mr. Deb, also submits that the Kiosk Boxes are kept locked with the live parts fitted deep inside for safety. Even if the door of the Kiosk Box remains open and any person accidentally falls upon it, he might get some cut or bruise, but not electrical shock. Electrical shock may take place only when one intentionally puts his/her hand inside the same for any mischievous purpose or for foolish curiosity ignoring the danger sign. Therefore, in the alleged incident, there was no negligence on the part of the respondents-defendants and if the appellant-plaintiff at all received some injury, it was because of his mischief, negligence or delinquency.

[11] Learned counsel, Mr. K. Deb, for the appellant respectfully submits, with due reference to the case records, that the instant suit is not maintainable under the Fatal Accidents Act, 1855, as the alleged victim has not expired as a consequence of the incident in question. The provisions of

the said Act apply specifically to claims arising from death caused by wrongful acts, and in the absence of such fatality, the suit cannot be sustained under this statute. Furthermore, it is contended that the suit is barred by the law of limitation. Although a cause of action may arguably exist, it is asserted that the period prescribed for initiating legal proceedings has elapsed, thereby rendering the suit time-barred and liable to be dismissed on that ground alone.

[12] Learned counsel, Mr. K. Deb, also submits that the appellant has failed to establish the quantum of damages suffered. There is a conspicuous absence of any medical evidence or documentation to corroborate the alleged injuries or losses claimed. No medical expert witness has been examined to testify on the nature and extent of the injuries, nor have any medical reports or bills been produced as evidence. In this regard, the appellant's reliance solely on the final report filed by the investigating officer is insufficient to discharge the evidentiary burden necessary to substantiate claims for consequential damages. The investigating officer's report primarily pertains to the facts of the incident and does not serve as a substitute for medical or other expert evidence required to prove the extent of damages. Accordingly, the claim for damages lacks the requisite evidentiary foundation and must be held to be unsubstantiated. The learned counsel further submits that the learned Trial Court, after due consideration of the evidence on record, has already granted compensation in the amount of Rs. 30,017/-, which adequately addresses the claim before it. In view of the foregoing submissions, learned counsel for the respondents-defendants respectfully submits that the instant

appeal be dismissed, and that the impugned judgment and decree of the Trial Court be affirmed in all respects.

[13] This Court has carefully considered the submissions advanced by the learned counsel for both parties and has also carefully gone through the materials available on record.

[14] This Court is of the opinion that the learned Trial Court has rightly dealt with the issues in paragraph nos. 8.15, 8.16 and 9.2 of the impugned judgment which are extracted hereunder for reference:

“8.15. At this juncture, section 43 of the Indian Evidence Act, 1872 categorically states that judgments, orders, or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provisions of the Act. Thus, findings of a criminal Court is not always binding on a civil Court dealing with facts arising out of same transaction. Much weaker is the status of a Final Report filed by the Investigating Officer of a criminal case. Therefore, basing on Ext. 1 (as a whole) which is the certified copy of Final Report filed by the Investigating Officer in case no. 2018DMN158, the plaintiff side is unable to prove that the injuries, including psychiatric injuries, allegedly caused to the plaintiff were the proximate and direct effects of the alleged negligence by the defendants.

8.16. Secondly, admittedly the plaintiff side could not examine any medical expert in this case, and consequently, could not bring into evidence any medical document showing that the plaintiff had sustained any kind of medical injury including psychiatric injury in the alleged incident and that those were the proximate and direct effects of the alleged negligence by the defendants.

9.2 The above discussion clearly puts forward that the instant suit is barred by limitation and the plaintiff side could not prove that the injuries, including psychiatric injuries, allegedly caused to the plaintiff were the proximate and direct effects of the alleged negligence by the defendants. Hence, I am of the considered opinion that the plaintiff is not entitled to the relief(s) as prayed for or to any other relief(s) in the instant case. Rather, as per section 35 of CPC he is to bear the costs of this suit.”

[15] Consequently, we do not find any infirmity in the findings arrived at by the learned Civil Judge (Senior Division), North Tripura, Dharmanagar while granting compensation of Rs.30,017/-. This Court, upon careful consideration of the submissions and the record, is of the firm view that there is no prima facie or compelling reason to interfere with the impugned judgment and decree dated 23.08.2024 passed by the learned Trial Court. The findings and conclusions rendered by the Trial Court are well-reasoned, legally sound, and supported by the evidence on record. In light of the foregoing, the instant appeal is accordingly dismissed, and the judgment and decree of the learned Trial Court dated 23.08.2024 stands affirmed in its entirety

[16] As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[17] Send down the LCRs forthwith.

S. DATTA PURKAYASTHA, J.

DR. T. AMARNATH GOUD, J.