

THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.04 of 2012

1. The Chairman-Cum-Managing Director,
Tripura State Electricity Corporation Ltd.,
Banamalipur, Agartala, West Tripura
2. The Senior Manager,
Tripura State Electricity Corporation Ltd.,
Sekerokote, P.S. Amtali, District - West Tripura

.....**appellants**

- Vs -

Smt. Supriya Debnath,
wife of late Litan Debnath,
resident of Village – Fultali,
P.S. Amtali, District – West Tripura

.....**Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellants : Mr. D. C. Nath, Advocate.

For the respondent : Mr. K. K. Pal, Advocate.

Date of hearing and delivery : **06.01.2015**
of judgment & order

Whether fit for reporting : **No**

JUDGMENT & ORDER (ORAL)

Heard Mr. D. C. Nath, learned counsel appearing for the appellants, Tripura State Electricity Corporation Ltd. as well as Mr. K. K. Pal, learned counsel appearing for the sole respondent.

02. By this appeal the judgment and decree dated 17.04.2010 delivered in Money Suit (Fatal Accident) No.59 of 2008 by the Civil Judge, Senior Division, West Tripura, Agartala,

Court No.1 has been challenged. The suit has been filed by the respondent under Section 1 A of the Fatal Accident Act for realising damages to the extent of Rs.27,19,200/- for the death of her husband namely Litan Debnath, who was a driver by profession and died on 17.09.2003 by electrocution for gross negligence of the appellants and its officers.

03. It has been pleaded that on 17.09.2003 the deceased was working in the house of the father of the plaintiff under Amtali PS and at about 7.30 a.m. in the morning while he went to urinate in the western side of the house he came in contact with an electric post which had the live electricity for the wrongful action on the part of the defendants. When he was found electrocuted, he was taken to the G. B. Hospital but unfortunately he was declared dead. Post mortem examination was conducted and a case for unnatural death was registered by the Amtali Police Station vide their case No.20 of 2003 under Section 174 of the Cr.P.C. The sole respondent, the plaintiff, informed that fateful occurrence to the Sub-Divisional Officer, Electrical, Sekerkote, West Tripura and subsequently to the Chief Engineer, Electrical, Tripura and the Inspector (Electrical), Division No.III, Agartala, West Tripura on 18.09.2003. Despite such information and claim for damage, no reply whatsoever having been received, the sole respondent filed the suit. The respondent has pleaded further that her husband was earning a sum of Rs.4,500/- per month with Rs.60/- per day as expenses of food. So, she has calculated his monthly income to be Rs.6,000/-.

04. By filing the written statement, the appellants herein denied the pleaded facts and stated that it is for the wrongful conduct of the deceased he got electrocuted. The appellants set up a story that the deceased died *"due to his illegal and unauthorised activities with the electrical supply line and apparatus. When as per Electricity Rules no person shall handling of electric supply line and apparatus or work on any live electric supply line or apparatus and no person shall assist such person on such work unless he is authorised in that behalf, and takes the safety measures approved by the Electrical Inspector. In this case Litan Debnath was electrocuted at the time of connecting illegal hook line with the L.T. line of the Department and for which the Department is no way responsible as per law."* One of the officers namely Mita Saha has verified the statement to be true to her knowledge but nowhere it has been disclosed how the said officer could gather her personal knowledge about the alleged wrongful action of the deceased and it is an admitted position that the appellants herein did not adduce any evidence whatsoever in respect of their pleadings as stated.

05. However, on the basis of the pleadings the trial court framed the following issues:

- "(i) Whether the suit is maintainable in its present form and nature?**
- (ii) Whether the fatal accident was caused due to negligence and actionable wrong on the part of the defendants?**
- (iii) Whether the plaintiff is entitled to damages from defendants? If so, amount of the entitlement with interest, if any?**

(iv) *What other relief the plaintiff is entitled to?*

On the basis of the evidence so led by the respondent all the issues were decided in the affirmative and the damage has been assessed by the trial court at Rs.5,44,000/- with additional amount of Rs.2,000/- as the funeral expenses and Rs.5,000/- as the loss of consortium and a further sum of Rs.2,500/- towards the loss of estate. Thus, the compensation as directed to be paid has come to Rs.5,53,500/-. It has been further directed that the said amount shall carry interest @ 5% per annum from the date of the institution of the suit.

06. Being aggrieved by the said judgment and decree as stated this appeal has been filed. Mr. D. C. Nath, learned counsel for the appellants has submitted that for the wrongful act of the deceased the said fatal accident occurred and as such the respondent is not entitled to damages as claimed or otherwise. In the alternative, he has further submitted that the said accident occurred for the contributory negligence of the deceased. Therefore, the appellants are not liable to pay the entire damage as ascertained by the trial court. In addition to those grounds of objection, Mr. Nath, learned counsel appearing for the appellants has raised two further objection as regards the determination of age of the deceased and his income for the purpose of determining the damage.

07. In reply to this objection Mr. K. K. Pal, learned counsel for the respondent has submitted that after due

investigation the police filed the final report in respect of the said fatal accident. It would be apparent from the said final report which has been admitted in the evidence that:

"it is revealed that on the morning of 17/9/03 about 0730 hrs while the Litan Debnath s/o. Sri Manharan Debnath went for natural call in the western side of the house of his father in law Pradip Debnath and when he touched an iron electric post then he was shocked by electricity. Thereafter he was shifted to G. B. Hospital on serious condition for treatment where he succumbed to his injuries on the same day. During investigation no (illegible) established behind the said death of deceased Litan Debnath and the death of deceased was accident in nature."

08. Based on the said report Mr. Pal, learned counsel for the respondent has strenuously argued that from the final report as submitted by the police nowhere it has been revealed that for wrongful action of the deceased the said fateful accident occurred. He has further relied on the medical records as admitted in the evidence such as the post mortem report as well as the certificate of the cause of death to demonstrate that the death was for the electrocution. Even though there is no controversy as regards the cause of death but Mr. Pal, learned counsel has taken the pain to take this Court to the relevant records. In respect of the objection raised as regards the age of the deceased, Mr. Pal, learned counsel for the respondent has relied on the school certificate dated 24.04.1995 admitted in the evidence to show that the deceased was born on 19.11.1969. It is further apparent that the deceased was holding a valid driving licence under No.TR-W/39191 dated 30.04.2003 on the day of the fatal accident.

09. On the face of the rival contentions, this Court would adjudicate the controversy broadly on the two points: (1) whether it has been established by the appellants that the fatal accident occurred for the wrongful act of the deceased or was there contributory negligence on the part of the deceased and (2) whether the damages as assessed by the trial court is in compliance with the fundamental principles for assessing such damage or not. As the appellants did not adduce any evidence whatsoever to prove their pleadings as to the wrongful act of the deceased this Court is unable to accept such contention. Even for the purpose of proving the contributory negligence certain amount of facts are to be established by way of adducing evidence. Even on that score the appellants did not discharge their onus. Even by applying the principle of *res ipsa loquitur* this Court cannot arrive at a finding that there was some negligence on the part of the deceased. Therefore, this objection cannot be sustained in law. So far the other points as formulated by this court as regards the determination of age of the deceased and the damages, this court finds certain material irregularities which need to be reassessed.

10. From the school certificate it has appeared that the deceased died at the age of 35 years 6 months and 22 days. As there is no challenge as to the determination of his income, this Court would not venture for reassessing the income. More so, a driver could well earn Rs.4,000/- per month in the year 2003. But so far the determination of the personal expenses is concerned, it

appears that only the respondent was dependent on the deceased. As such deduction of 1/3rd of the income of the deceased appears unreasonable. It ought to have been 50% of the total income.

11. Having regard to these irregularities, the damage are required to be re-determined in the following terms:

Monthly income being Rs.4,000/- the annual income becomes Rs.48,000/-. 50% from that income is liable to be deducted towards the personal expenses of the deceased. Thus, the annual loss of dependency comes to Rs.24,000/-. On the basis of the school certificate the age of the deceased comes above 35 years. Thus, the multiplier of 16 should be chosen for assessment of damages having regard to the schedule appended to the MV Act, 1988. Thus, damages for the sole respondent comes to Rs.3,84,000/-. The other components as awarded by the trial court shall remain unaltered. Hence the total compensation comes to Rs.3,93,500/-. This amount shall carry interest @ 6% per annum from the date of the institution of the suit i.e. 20.11.2008 till payment.

12. Mr. Nath, learned counsel for the appellants has submitted that they have deposited 50% of the decretal amount. The said amount, it is needless to say, shall be deducted at the time of making final payment and there shall be no interest on the amount as already paid by the appellants. The remaining part of the decretal amount shall be paid within a

period of three months. It is made clear that if the said amount be not paid within three months, the remaining decretal amount shall carry interest @ 9%.

13. Having held so, the appeal stands partly allowed. Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE

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