

THE HIGH COURT OF TRIPURA
AGARTALA

RFA No. 11 of 2009

- 1. The Tripura State Electricity corporation Ltd.**
Represented by its Chairman cum Managing Director,
Bidyut Bhawan, Banamalipur,
Agartala.
- 2. The Sr. Manager,**
Electrical Sub-Division No.3,
Krishnanagar, Natunpalli.

.....Appellants.

- Vs -

- 1. Shri Jagannath Rishi Das.**
S/O. Shri Gakul Rishi Das,
Vill: Bhati Abhoynagar,
P.S.: West Agartala,
Dist.: West Tripura.

....Respondent.

- 2. The State of Tripura,**
Represented by the Secretary,
Power Department,
Govt. of Tripura, Agartala.

.....Pro-Respondent.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE THE JUSTICE MR. S. TALAPATRA**

For the Appellants	: Ms. S. Deb Gupta, Advocate.
For the Respondent No.1	: Mr. A. K. Bhowmik, Senior Advocate. Ms. A. Banik, Advocate.
For the Respondent No.2	: Mr. J. Majumder, Advocate.
Date of hearing & delivery of Judgment & Order	: 05.10.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER (ORAL)

This appeal by the Tripura State Electricity Corporation Ltd. (for short, 'TSECL') is directed against the judgment and decree dated 5.9.2009, delivered by the learned Civil Judge, Senior Division, West Tripura, Agartala whereby he awarded compensation of Rs.12,00,000/- in favour of the plaintiff along with interest @ 7% per annum from the date of judgment i.e. 5.9.2009. We have been informed that a sum of Rs. 3,00,000/- (three lakhs), has already been released in favour of the plaintiff.

2. Briefly stated the facts of the case are that the respondent (hereinafter referred to as the 'plaintiff') Jagannath Rishi Das filed a suit through his mother. The respondent had firstly filed a petition in '*forma pauperis*' which was allowed and, thereafter, he filed this suit claiming compensation.

3. The facts leading to the filing of the suit, as alleged by the plaintiff, are that on 19.10.2005 at about 12.00 noon he was at Durga Chowmuhani when an electric wire fell on him near Suryatoran Club and he was electrocuted and as a result of the electrocution both his hands were amputated. It is also alleged by him that he was a Rickshaw Puller and, therefore, has become totally disabled and unable to earn any amount whatsoever. The stand of the TSECL, appellant herein, was that no power line had fallen down and no complaint about the said falling of the power

line had ever been received in the Department. The TSECL denied the allegations made in the suit.

4. Before dealing with the other matters it would be pertinent to mention that the suit was wrongly filed under the Fatal Accidents Act. This was a suit claiming compensation for injuries suffered in an electrocution and, therefore, the question of application of the Fatal Accidents Act did not arise. By its very name the Fatal Accidents Act is only applicable where as a result of the accident death has occurred. The provisions of the Fatal Accidents Act are not applicable in the case of injuries. The plaintiff, the defendants as well as the Court below did not realize this mistake throughout the proceedings and it was only in this appeal that this point has been raised.

5. Even though the plaint may not lie under the Fatal Accidents Act, under common law a suit for damages on account of injuries suffered due to the negligence of the others will always lie. Under Common Law there was no right to claim damages in case of death. Right to claim damages was, however, always recognized in case of personal injury. After the advent of the rail and road transport, the Fatal Accidents Act of 1846 was introduced in England and in case of death due to negligence the tortfeasor was made liable to pay compensation to certain relatives. Over a period of time, the law further developed and the Fatal Accidents Act was introduced in India in 1855. The Motor Vehicles, 1939 was enacted to deal specifically with accidents arising out of the use of Motor

Vehicles. Therefore, the suit is maintainable and merely because a wrong provision of law has been mentioned will not mean that the suit has to be dismissed.

6. In the suit the following issues were framed:

“ISSUES

- 1. Is the claim of plaintiff petitioner is maintainable in its present form?**
- 2. Whether on 19.10.05 at about 12-00 hrs. near Suryatara club, Durga Chowmuhani high power voltage electrical line had fallen down on the body of Jagannath Rishidas causing damage to both of his hands in the nature of permanent disablement?**
- 3. Is the plaintiff petitioner suffered permanently disablement due to fatal accident, if so, whether he is entitled to get compensation by way of damage and if so, upto what extent compensation is payable?**
- 4. To what other relief/relieves the plaintiff-petitioner is entitled to get?”**

Issues No. 2 and 3 were the main issues. The plaintiff only examined his mother Smt. Saibya Rishidas. She has admittedly not seen the occurrence and we are constrained to observe that the learned trial Court could not have given findings on issue No.2 as to how the accident occurred without having the benefit of some person who had witnessed the occurrence. According to the plaintiff, the occurrence took place in the day time and he was immediately taken to the Hospital. Therefore, there were large number of eye witnesses. The plaintiff himself is the main witness. He may have lost his hands but he can walk, he can talk and that means he can come to court and depose orally as a witness. Therefore, we see no

reason why his statement should not have been recorded. We also find that while assessing the damages no doctor has been examined to assess what is the extent of disability and the case has been dealt with in a very perfunctory manner. Having held so we do not think that it would be proper to allow the appeal and dismiss the suit.

7. The plaintiff had initially filed the suit in '*forma pauperis*'. He is a poor person and merely because of lack of proper legal advice he should not be made to suffer. Therefore, in the interest of justice though we set aside the judgment and decree of the learned trial Court we remand the case back to the learned trial Court for decision afresh, in accordance with law. The parties shall be at liberty to lead all evidence and the plaintiff shall be permitted to appear as his own witness and his statement shall be recorded in Court. We may also observe that in case the plaintiff appears in Court, the Court can also make oral observations about the actual disability which means not the extent of disability but the factual aspects which are apparent.

8. In view of the judgment passed by the learned trial Court a sum of Rs. 3,00,000/- (three lakhs) has been paid to the mother of the plaintiff. In view of the fact that we have remanded the case, we direct that this amount shall not be refunded till the case is decided one way or the other and the payment of this three lakhs will abide by the final decision in the suit. If the suit is decreed in favour of the plaintiff then this amount shall be taken into

account and if the suit of the plaintiff is dismissed then obviously the same will have to be refunded.

9. The parties through their counsel are directed to appear before the learned trial Court on 19th November, 2015 and then the learned trial Court shall fix a date for evidence of the plaintiff, firstly in the month of December, 2015 and if one adjournment is required shall grant the plaintiff one adjournment and list the matter in January, 2016. Thereafter, the TSECL will be given two opportunities to lead evidence in February and March, 2016 and thereafter, arguments shall be heard and the case shall be disposed of latest by 31st May, 2016. The parties shall be at liberty to obtain the help of the Court i.e. they can summon the witnesses through the Court.

10. With the aforesaid observations and directions, the appeal is disposed of.

Send down the LCRs forthwith.

JUDGE

CHIEF JUSTICE

satabdi