

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.45 OF 2011

1. The Chairman-cum-Managing Director,
Tripura State Electricity Corporation Ltd.,
Bidyut Bhavan, Banamalipur,
P.S. East Agartala, District : West Tripura

2. The Deputy General Manager,
Electrical Division No.III,
Banamalipur, P.S. East Agartala,
District : West Tripura
- Appellants

Vs.

1. Smt. Manika Debnath,
wife of late Braja Gopal Debnath

2. Smt. Saila Bala Debnath,
wife of late Radha Krishna Debnath

3. Miss Purba Debnath,
daughter of late Braja Gopal Debnath

- all are residents of Vill. Nalgaria,
P.O. & P.S. Ranirbazar, District : West Tripura

- respondent No.3, being minor is represented
by the respondent No.1 as natural guardian, the mother
-Respondents

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

For the appellants

:

Mr. D.C. Nath, Advocate

For the respondents

:

Mr. T.D. Majumder, Advocate
Mr. T.D. Sarkar, Advocate

Date of hearing & order

:

28.07.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Nath, learned counsel appearing for the appellants as well as Mr. T.D. Majumder alongwith Mr. T.D. Sarkar, learned counsel appearing for the respondents.

2. This is an appeal under Section 100 of the CPC against the order dated 14.03.2011, delivered in Money Appeal No.10 of 2010 by the District Judge, West Tripura, Agartala. By the said order dated 14.03.2011, the prayer for condoning the delay of 228 days has been rejected and as consequence thereof, the said appeal has been dismissed without admission.

3. While admitting this appeal, the following substantial questions of law were formulated :

“(i) Whether the first appellate court committed error by rejecting the prayer for condonation of delay on the ground that the delay was attributable to the learned counsel engaged by the appellant?”

(ii) Whether the learned trial Judge committed error by rejecting the prayer for condonation of delay by holding that no action was taken by the appellant-petitioner for the misconduct against the lawyer for taking no step in time for preferring the appeal?”

4. The essential facts as may be required for disposal of this appeal may be noted briefly at the outset.

The respondents herein had filed the Money Suit No.33/2006 before the Civil Judge, Senior Division, Court No.1, Agartala, West Tripura against the appellants herein for death of Braja Gopal Debnath, the husband of the respondent No.1, father of the respondent No.3 and son of the respondent No.2. There is no dispute that said Braja Gopal Debnath died on 13.03.2006 by way of electrocution while he was returning with a gunny bag full of grass as head-load as he came in contact with the electric wire which was drooping on the path.

5. A suit was filed by the respondents under Section 1A of the Fatal Accident Act for compensation for the said death. The appellants herein filed the written objection, but did not adduce any evidence. The pleaded case of the respondents was that Braja Gopal Debnath, since deceased, was aged about 38 years on the day of his death by electrocution and he was carrying on profession of mason and used to earn ₹150 per day.

6. The trial court, the court of the Civil Judge, Senior Division, Court No.1, West Tripura, Agartala decreed the suit, being M.S. No.33/2006, pursuant to the judgment dated 27.01.2010 and awarded compensation to the extent of ₹5,85,500, which included consortium for the respondent No.1 at ₹5,000.

7. It is apparent on the face of record that for determining the said compensation, the trial court has taken recourse to the schedule appended to the Motor Vehicles Act and on considering the income at ₹150 per day, the loss of dependency was determined initially and thereafter, total loss was assessed on using the multiplier 16 based on the age of 38 years of the deceased at the time of his death.

8. Against the said judgment dated 27.01.2010, the appellant belatedly filed the money appeal, being M.A. No.10/2010. As the said appeal was barred by limitation, a petition under Section 5 of the Limitation Act for condoning the delay of 228 days was filed accompanied by the said appeal, but the said petition for condonation of delay was dismissed by the impugned order on the ground that for the conduct of the lawyers the said delay occurred, but no record has been placed as to what action the appellants had taken for the misconduct of the lawyers. On the basis of that, the delay which actually stood at 285 days was not at all condoned for lack of proper explanation. As consequence thereof, the Money Appeal No.10/2010 was dismissed without admission.

9. Mr. D.C. Nath, learned counsel appearing for the appellants has submitted that there was no laches on the part of the appellants and that aspect of the matter was not considered by the court. He has further submitted that the first

appellate court has failed to persuade itself to the merit of the appeal. He has stated that there is no proof that the deceased was 38 years of age or that the appellants were entirely responsible for the death of said Braja Gopal Debnath. He has submitted further that the death has occurred for the contributory negligence. But, it is an admitted position that, that ground was not taken in the written statement nor the appellants adduced any evidence to prove the contributory negligence.

10. Having considered all these aspects cumulatively, this court finds no merit in this appeal, inasmuch as no explanation has been given for explaining the delay. What surfaced further is that the laches are to be entirely attributed to the appellants, as the defendants in the suit failed to keep track on the proceeding. They cannot escape from the situation by attributing laches on the counsel. No record has been placed when the appellants came to know about the judgment or when it instructed the counsel to collect the certified copy or what the appellants had done when the file was placed before another lawyer for legal opinion. All these days the appellants had just laid back without doing anything. The doctrine of equality before law demands that all the litigants, including the state, as a litigant are accorded with the same treatment and the law is administered in an even-handed manner. For absence of

sufficient cause shown by the appellant, the vigours of law would follow.

11. As such, this court does not find any merit in this appeal. Accordingly, this appeal is dismissed.

Draw the decree accordingly. Thereafter send down the LCRs.

JUDGE

ROY