

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.141/2015
(The Maharashtra State Electricity Distribution Co. Ltd. through its
Executive Engineer .vs. Sharda Vithalprasad Ambule and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. A.M. Quazi, Advocate for Appellant.
Mr. R.M. Pande, Advocate for Respondents

CORAM : A.V. Nirgude, J.
DATED : April 15, 2015.

1. This appeal does not give rise to any substantial question of law.

2. The facts leading to this litigation are as under:-

The respondents are plaintiffs. They filed this suit for damages. One Vithalprasad who was husband of respondent no.1 died due to electrocution. This incident took place due to a live wire lying on the ground. Vithalprasad did not know about the live wire and had stepped on it and died. The Courts below held that the electric line was negligently allowed to lie on the ground, therefore, the appellants were liable to pay compensation to the respondents/plaintiffs.

3. The respondents/plaintiffs clearly mentioned in the plaint that they are entitled to Rs.13,00,000/- as compensation but they added that due to their financial difficulty, they would restrict their claim to Rs.5,00,000/-. The respondents/plaintiffs also added that in case the Court came to a conclusion that they were entitled to

more compensation, they would deposit additional necessary Court fee. It so happened that the trial Court calculated compensation to the tune of Rs.4,03,500/- but on appeal, the compensation was increased to Rs.7,38,852/-. Against this enhancement, the present appeal is filed on two grounds i.e. (i) the learned Judge of the appeal Court could not have granted relief more than the claim made in the plaint and (ii) the method of calculation of compensation used by the learned Judge of the lower appellate Court is erroneous.

4. Order VII Rule 7 of the C.P.C. decides as to how in a plaint relief should be sought. The purpose for this provision is to make the defendant aware as to what they are defending. The respondents/plaintiffs clearly mentioned that they are entitled to Rs.13,00,000/- but at that moment they would restrict their claim to Rs.5,00,000/-. They also showed willingness to deposit more Court fees if higher amount is found payable to them. In a case of this nature, Order VII Rule 7 of C.P.C. is sufficient provision to make statement relating to claim wide enough to cover the present case.

5. The learned counsel for the appellant tried to place reliance on the judgment of the Supreme Court in the case of **Rajendra .vs. Basudeo** reported in **AIR 2002 Supreme Court 136**. The ratio of this judgment is not applicable to the present case. As stated above, the respondents/plaintiffs made a larger claim and a smaller relief was granted to them. Besides this, no other judgment is shown which would support the appellant's case. The other objection pertains to appreciation of evidence and method of calculation of

damages. I do not find any illegality in the judgment of lower appellate Court. I am not inclined to admit this appeal also because the appellant is unnecessarily dragging the respondents to this Court. Their claim is genuine and the amount awarded is in a way moderate. The appeal stands dismissed.

X-Objection St. No. 4973/2015

Cross-objection is permitted to be converted into second appeal subject to limitation. The same shall be heard on next date.

Stand over to 24.04.2015.

JUDGE

halwai