

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

RFA.No. 11 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN OS 243/2008 of SUB COURT, PATHANAMTHITTA

APPELLANTS:

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY SECRETARY, PATTOM
THIRUVANANTHAPURAM-695 004.

2. THE ASSISTANT EXECUTIVE ENGINEER
ELECTRICAL MAJOR SECTION, KADAMPANADU
PATHANAMTHITTA DISTRICT, PIN-691 552.

BY ADV. SRI.K.M.SATHYANATHA MENON, SC, KSEB

RESPONDENT:

SHAJI
S/O.KAMARUDEEN, VAYALITHARA PUTHEN VEETIL
KAVANADU P.O., SAKTHIKULANGARA VILLAGE
KOLLAM DISTRICT, PIN-691 003.

R BY ADV. SRI.ALEX N.MATHEW (KOLLAM)
R BY ADV. SRI.H.RAMANAN
R BY ADV. SRI.JAMES JOSE

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

R.F.A. No. 11 of 2012

Dated this the 23rd day of July, 2015

JUDGMENT

Sunil Thomas, J.

The defendants, who are aggrieved by the judgment and decree in O.S.No.243/2008 of the Sub Court Pathanamthitta, are the appellants herein.

2. The case of the plaintiff was that on 1/9/2007 at about 11.30 a.m., he along with his friend was riding a motor cycle along the Kadampanadu - Adoor road. When it reached the place of incident, an electric cable that was drawn across the road, but lying in a loose manner, got struck on his neck and both of them were thrown off. The plaintiff sustained deep cut on the neck and was unconscious. He was immediately rushed to Holy Cross Hospital, Adoor, from where he was referred to Pushpagiri Medical College Hospital, Thiruvalla, for expert management. He underwent treatment for 42 days. He had also undergone a major surgery of his throat. He was totally bed ridden during the above period and could not

speak for one month. Even after discharge on 12/10/200, he had to undergo review every two weeks. The accident had caused considerable mental agony and pain and he had incurred an expense of about Rs.1,50,000/- for his treatment and medicine. Due to injury, his speaking ability was reduced and he had sustained permanent disability. The incident happened only because of the negligence of the Electricity Board. Hence, the plaintiff claimed compensation for damages quantified at Rs.4,00,000/- with 6% interest recoverable from the defendants. The defendants filed a written statement denying the various allegations. It was contended that cause of action against the defendants was not sustainable, since the incident occurred when a telephone wire got struck on the neck of the plaintiff. There was no complaint about any loosening of the electric service wire. The defendants came to know about the incident only after getting notice from the court. The electric wires are drawn in compliance with the standard specification, maintaining statutory clearance. The defendants are not liable to pay any compensation.

3. On the basis of the above pleadings, appropriate issues

were formulated by the court below and both sides proceeded for trial. On the side of the plaintiff, he was examined as PW1 and pillion rider was examined as PW2. Exts.A1 to A10 series were marked. There was no evidence from the side of the defendants.

4. On the basis of the available materials, the court below concluded that the incident occurred due to negligence of the defendants and granted decree for a sum of Rs.2,88,664/- with future interest at the rate of 6% per annum till realisation.

5. Aggrieved by the above judgment and decree, the defendants have preferred this appeal. Heard both sides and examined the records.

6. The plaintiff had claimed a sum of Rs.4,00,000/- as compensation. The incident, as narrated by the plaintiff, is not disputed by the defendants. The only contention taken up by the defendants is that the incident did not occur due to an electrical wire, but due to a telephone cable. It was further contended that the Electricity Board was not liable to pay compensation claimed.

7. To prove the incident, the plaintiff relied on the oral testimonies of himself as PW1 and his pillion rider as PW2. Both

have spoken in terms of the incident. They stated that, while they were traveling on the motor cycle, the cable wire, which was loose and hanging across the road, got struck on his neck and he and the pillion rider were thrown off. Exts.A1, A2 and A4 are the documents issued from the Pushpagiri Medical College Hospital, evidencing the treatment given to the plaintiff. Ext.A2 is the discharge card. The above documents coupled with evidence of PW1 and PW2 cumulatively show that the plaintiff had undergone surgery and was in the hospital for long. He continued treatment even after discharge from the hospital.

8. Ext.A7 (a) is the FIR. Ext.A7(b) is the FIS given by PW2. He has narrated the incident therein. Ext.A7(c) is the scene Mahazar, which indicates the lie of the road. After investigation, the police laid Ext.A7(d) final report. Ext.A6 series are the various bills issued by the hospital covering the 42 days period. The above documents cumulatively show that in the accident the plaintiff had sustained very grievous injuries. These facts borne on record are corroborated by the oral testimonies of PWs 1 and 2, which are also not seriously disputed.

9. As evident from the pleadings of the defendants, the main contention was that it was a telephone cable that caused the incident. The defendants mainly harped on the fact that there was no complaint of loosening of the electric line at any point of time either on the date of the incident or days preceding it. It was further contended that Ext.A7(b) showed that PW2 had informed the police that telephone cable got entangled on the neck of PW1. Evidently, the contention of the defendants seems to be that, if there was no complaint, that lead to an automatic conclusion that there was no loosening of live electric wire. In this regard, the defendants have not produced the complaint register to show that they have not received any information about hanging of the electric wire. Regarding the second contention, it is to be noted that Ext.A7(b) was recorded on 13/9/2007, three days after the incident. The entire incident happened unexpectedly. PW1 sustained very serious injuries and was immediately rushed to the hospital. Evidently, they did not sustain any electrical shock. In this circumstances, it is possible that PW2 made a bona fide mistake by stating that it was a telephone cable. On the other hand, Ext.A7(c) scene

mahazar proves that there was an electric service connection wire which was drawn across the road. The details of the above electric lines are available in Ext.A7. After investigation, the police filed final report which Ext.A7(d), after satisfying that the incident occurred due to electric cable. This leads to a normal conclusion that it was the electric line of the defendants that caused accident. There is no contra evidence to that. Hence, the finding of the court below, that the incident occurred due to the electrical cable drawn across the road which was hanging above the the road posing threat to the life of the people, is only to be confirmed.

10. The above factual finding leads to an irresistible conclusion that the incident might not have been happened, but for the negligence of the defendants. No doubt, if the electric line is drawn across the road, there is every chance of resulting in any accident in case of loosening of the electrical line. Thus drawing of such electrical lines imposes a strict liability on the defendants, to be answerable to persons who sustain injury due to any accident arising therefrom. Further, the principle of *res ipsa loquitur* is applicable in this case. Hence, the reasonable

conclusion that can be drawn is that the defendants are responsible for the incident and are liable to make good the loss caused to the defendants.

11. The court below has also relied on the decision reported in **KSEB v.Kamalaksy Amma** (1986 KLT 1124), wherein it was held that when the plaintiff succeeded in proving that a pedestrian was electrocuted from a live wire hanging down from an electric post, there is a presumption of fact that there was lack of proper care on the part of those in the management or control of power supply system of that place. The above decision is squarely applicable to the facts of this case as correctly held by the court below.

12. Coming to the question of damages, there is no contra evidence and the court has to rely on the evidence tendered by PW1 alone. Admittedly, PW1 was taken to Pushpagiri Medical College hospital wherein he underwent treatment for 42 days. Exts.A6 series of bills show that he had incurred substantial expenses. It is also on record that he had sustained severe injury on his neck and had to undergo surgery. He was confined to the hospital for 42 days. Even after the continuous treatment for 42

days as IP, he had to continue with the treatment and follow up procedure. Evidently, he must have suffered considerable pain and agony. The court below, held that he was entitled to claim damages for the pain and sufferings. The court below in respect of the above seems to have taken a very lenient view and has granted a sum of Rs. One Lakh towards pain and sufferings. We find no reason to interfere with the above finding, which is based on the strong, convincing and cogent reason. The court below has not granted any other amount for the loss of income or disability, which were either not specifically pleaded or proved.

13. An evaluation of the entire materials lead to a conclusion that the findings arrived at by the court below does not call for any interference. The judgment and decree of the court below is liable to be confirmed and we do so.

In the result, the appeal is dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN

Judge

Sd/-

SUNIL THOMAS

Judge

dpk

/true copy/ PS to Judge.

