

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

RFA.No. 421 of 2014 ()

OS 448/2010 of SUB COURT,ALAPPUZHA

APPELLANT(S)/DEFENDANTS:

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY SECRETARY, VYDYUTHI BHAVAN
PATTOM PALACE P.O., THIRUVANANTHPUARAM-695 004.
2. R.BABU
ASSISTANT ENGINEER, ELECTRICAL DIVISION
KERALA STATE ELECTRICITY BOARD, ALAPPUZHA DISTRICT.

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

RESPONDENTS/PLAINTIFFS :

1. THOMAS
DEVASWAMCHIRA HOUSE, PADAHARAM P.O., THAKAZHY VILLAGE
KUTTANADU TALUK, ALAPPUZHA DISTRICT, PIN-688 562.
2. SALELA
D/O.AMMINI, DEVASWAMCHIRA HOUSE, PADAHARAM P.O.
THAKAZHY VILLAGE, KUTTANADU TALUK, ALAPPUZHA DISTRICT
PIN-688 562.

3. SAJI

S/O.THOMAS, DEVASWAMCHIRA HOUSE, PADAHARAM P.O.
THAKAZHY VILLAGE, KUTTANADU TALUK, ALAPPUZHA DISTRICT
PIN-688 562.

4. SHYLAJA

D/O.AMMINI, DEVASWAMCHIRA HOUSE, PADAHARAM P.O.
THAKAZHY VILLAGE, KUTTANADU TALUK, ALAPPUZHA DISTRICT
PIN-688 562.

5. SABU

S/O.THOMAS, DEVASWAMCHIRA HOUSE, PADAHARAM P.O.
THAKAZHY VILLAGE, KUTTANADU TALUK, ALAPPUZHA DISTRICT
PIN-688 562.

R1 -R 5 BY ADV. SRI.T.P.PRADEEP

R1 -R 5 BY ADV. SRI.P.K.SATHEES KUMAR

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19.12.2014
THE COURT ON 22-01-2015 DELIVERED THE FOLLOWING:

C.R.

P.N.RAVINDRAN & P.B.SURESH KUMAR, JJ.

RFA No.421 of 2014

Dated 22nd January, 2015.

JUDGMENT

P.B.Suresh Kumar, J.

The Kerala State Electricity Board and one of its Assistant Engineers, who were arrayed as the defendants in O.S No.448 of 2010 on the file of the Court of the Subordinate Judge, Alappuzha, have come up in this appeal, challenging the decision in the said case. The respondents are the plaintiffs in the suit.

2. The first plaintiff is the husband and plaintiffs 2 to 5 are the children of one Ammini, who died of electrocution on 25.11.2007. According to the plaintiffs, on the said day, while the deceased was proceeding to the nearby stream to fetch water, she stepped on an electric line, which was lying on the ground and sustained severe injuries on account of electric shock. It is stated that though the injured was immediately taken to the Medical College Hospital, Alappuzha, by the time she reached the hospital, she succumbed to the injuries. A sum of Rs.6,00,000/- was claimed by the plaintiffs towards compensation on account of the death of Ammini, alleging that the accident occurred solely due to the negligence on the part of the defendants. It was stated by the

plaintiffs that the deceased was aged 49 years at the time of the accident, able bodied and healthy and was earning on an average the sum of Rs.200/- per day from her avocation as a coolie labourer.

3. The defendants filed a written statement contending, inter alia, that on account of the heavy rain and strong wind on the day previous to 24.11.2007, a coconut tree fell on the electric line and it was on account of the said reason, the electric line got snapped and was lying on the ground. According to the defendants, such accidents cannot be prevented and therefore, they cannot be held responsible for the same. Alternatively, it was contended by the defendants that the quantum of compensation claimed by the plaintiffs is excessive.

4. The court below, on an elaborate consideration of the materials on record, found that the death of Ammini was due to the negligence on the part of the defendants and therefore, they are responsible for the same. The court below also found that the sum of Rs.6,00,000/- claimed by the plaintiffs towards compensation is reasonable. Accordingly, a decree permitting the plaintiffs to recover the sum of Rs.6,00,000/- with interest @12% per annum from the date of accident till the date of decree and @6% per annum thereafter till realization was passed. The appellants are

aggrieved by the said decision.

5. Heard the learned Standing Counsel for the appellants and the learned counsel for the respondents.

6. The learned Standing Counsel for the appellants contended that the plaintiffs have not established that the accident occurred on account of the negligence on the part of the defendants. It was also contended by him that there was no evidence whatsoever to show that the deceased was earning any income at all and therefore, the compensation granted is excessive.

7. Per contra, the learned counsel for the respondents contended that since Ammini died of electrocution from a broken live phase connector line linked between two electricity posts maintained by the defendants, it is not necessary to establish negligence on the part of the defendants to claim compensation. It was also contended by him that the deceased being a house wife, even in the absence of any evidence concerning her income, compensation for loss of dependency shall be worked out and paid.

8. In **M.P. Electricity Board v. Shail Kumari** [2002(1) KLT 480 (SC)], the Apex Court held that even while the authority responsible for the supply of electric energy takes all safety measures to prevent escape of such energy, they are liable under law of torts to compensate for the injuries suffered by other

persons, irrespective of any negligence. The relevant portion of the judgment of the Apex Court reads thus:

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension, the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable

risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way ie., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

In the face of the said decision, there is no substance in the contention raised by the defendants that the plaintiffs have not established negligence on the part of the defendants for claiming compensation.

9. Coming to the issue relating to the quantum of compensation, it is settled that the compensation on account of loss of dependency in cases coming under the Fatal Accidents Act can be determined based on the multiplier method devised by the Apex Court in **Sarla Verma and others v. Delhi Transport Corporation and another** [2009(6) SCC 121]. It is also settled that the domestic work of a homemaker must be assigned value in terms of money for working out compensation to the remaining family members who are dependent on the services provided by

her. [see the decision in **Reliance General Insurance Co. Ltd. v. Jiyauddin** (2013(2) KLT S.N.40)]. In **Lata Wadhwa v. State of Bihar** (AIR 2001 SC 3218), the Apex Court held that even in the absence of any data for determination of the services rendered by housewives, the value of the multifarious services rendered by housewives for managing the family even on a modest estimation should be reckoned as Rs.3,000/- per month for the purpose of determining the compensation payable. It was also held by the Apex Court in the said case that the said yardstick shall be extended to all housewives between the age group of 34 to 59. In **Royal Sundaram Alliance Insurance Co. Ltd. v. Manmeet Singh and others** [2012 ACJ 721], the High Court of Delhi, placing reliance on the decision of the Apex Court in **Lata Wadhwa v. State of Bihar** (supra) held that the loss of dependency on account of the gratuitous services rendered by a housewife who is not a matriculate shall be determined based on the minimum salary of a non-matriculate in other cases, without deducting any amount towards the personal and living expenses. It was also held in that case that in addition, a notional sum of Rs.25,000/- towards loss of love and affection and a sum of Rs.10,000/- towards loss of consortium, if the husband is alive, can also be granted.

10. Coming to the case on hand, even assuming that the

deceased was not engaged in coolie work, going by the principles laid down by the Apex Court in **Lata Wadhwa v. State of Bihar** (supra), the value of the services rendered by the deceased per annum is liable to be reckoned as Rs.36,000/- for determination of the compensation payable to the plaintiffs. The accident involved in **Lata Wadhwa v. State of Bihar** (supra) took place on 3.3.1989, whereas the accident in the present case took place on 25.11.2007, after about 18 years. If the value of the services rendered as indicated in **Lata Wadhwa v. State of Bihar** (supra) is increased by 50%, taking into account of the inflation rate, the compensation payable to the plaintiffs on account of loss of dependency alone of the deceased, applying the multiplier of 13, would come to Rs.7,02,000/-.

11. In the said circumstances, we do not find any reason to interfere with the impugned decision of the court below and the appeal is, accordingly, dismissed *in limine*.

Sd/-

P.N. RAVINDRAN, JUDGE

Sd/-

P.B.SURESH KUMAR, JUDGE