

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 6th August, 2015.**

+ **RFA No.624/2005 & CM No.2869/2011 (for directions)**

NEELAM & ORS. Appellants

Through: Mr. J.P. Tiwari, Adv.

Versus

**MUNICIPAL CORPORATION OF DELHI &
ORS.**

..... Respondents

Through: Mr. Vikram Nandrajog, Adv. for R-2.
Mr. Rajmangal Kumar and Mr. S.K.
Dubey, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree dated 28th May, 2003 of the Court of Ms. Asha Menon, Additional District Judge of dismissal of Suit No.50/1996 (instituted on 16th September, 1996) filed by the appellants for recovery of compensation of Rs.4,50,000/- for causing death by negligence of the husband of the appellant / plaintiff No.1 and the father of the appellants / plaintiffs No.2&3.

2. Notice of the appeal was issued. On 12th July, 2004 the appeal was dismissed for non-prosecution but on application for restoration being filed by the appellants restored to its original position. The application of the

appellants for preferring this appeal as an indigent person was allowed on 23rd August, 2005. The Municipal Corporation of Delhi (MCD) (Delhi Electric Supply Undertaking (DESU)) against which the suit as well as the appeal were filed was during the pendency of the proceedings taken over by the Delhi Vidyut Board (DVB) and on privatisation of power supply in Delhi, DVB was also unbundled and accordingly North Delhi Power Limited (NDPL) and Delhi Power Company Limited (DPCL) have been impleaded as respondents No.2&3. The appeal, on 19th May, 2008 was admitted for hearing and ordered to be taken up as per its turn. The appeal, again on 27th October, 2009 was dismissed in default of appearance of the appellants; the application for restoration filed was also dismissed for non-prosecution. However, vide order dated 8th December, 2010, the appeal was restored to its original position and again listed for hearing as per its turn. Finding the matter to be old, it was directed to be listed in the category of ‘After Notice Miscellaneous Matters’ on 9th July, 2015 and the counsels sent for and the appeal posted for hearing for today.

3. Counsels have been heard and the Trial Court record perused.
4. The appellants / plaintiffs had instituted the suit as indigent persons pleading:

- (i) that the husband of the appellant / plaintiff No.1 and the father of the appellants / plaintiffs No.2&3, was a driver by profession and on 2nd August, 1996, when he was 27 years old, while plying his Tempo near Police Station-Alipur, Delhi went into a field to ease himself; while coming back from the field, he came in touch with a live wire left naked due to negligence of the respondents MCD and Govt. of Delhi and was electrocuted and died on the spot;
- (ii) that First Information Report (FIR) No.29/1996 of Police Station-Alipur under Section 304-A of the I.P.C. was registered against DESU;
- (iii) that the deceased, besides leaving the three appellants / plaintiffs also left a baby daughter;
- (iv) that the death of the predecessor of the appellants / plaintiffs was on account of the negligence of the respondents.

Accordingly, compensation of Rs.4,50,000/- was claimed.

5. A perusal of the Trial Court record shows, (a) that the appellants / plaintiffs, on enquiry were permitted to sue as indigent persons; (b) that DESU/DVB filed a written statement denying any negligence and pleading that “one conductor of HT line from Rishal T off got snapped due to

sabotage i.e. breaking of stay wire” and denying the other contents of the plaint for want of knowledge; (c) that on the pleadings of the parties, on 13th August, 2001, the following issues were framed:

- “1. Whether the death of Ram Niwas occurred on account of the negligence of the DVB? OPP*
- 2. Whether the plaintiff is entitled to compensation from the DVB and if so, to what amount? OPP*
- 3. Whether the plaintiff is entitled to interest and if so, at what rate? OPP*
- 4. Relief.”*

(d) that the appellant / plaintiff No.1 besides herself examined two other witnesses and closed her evidence; (e) that the DESU / DVB examined two witnesses and closed their evidence.

6. The learned Additional District Judge, vide the impugned judgment and decree, has dismissed the suit, finding / observing / holding:

- (I) that the appellant / plaintiff No.1 was admittedly not an eyewitness to the accident;
- (II) that PW2 Sh. Purshotam Dass examined by the appellant / plaintiff No.1 who claimed to be driving with the deceased at the relevant time and deposed about the accident also, only proved the accident but his evidence could not be said to be any evidence of

negligence of the defendants;

(III) that on the contrary, the witness of DESU / DVB had proved that the electricity wires (which caused the accident) snapped owing to certain unauthorized digging having been done by some other persons who were attempting to remove an electricity pole;

(IV) that the photographs of the site proved by DESU / DVB did not show the wires to have fallen from the poles on account of lack of maintenance by the DESU / DVB but for the reason of snapping;

(V) that it is the responsibility of the DESU / DVB to maintain wires carrying electricity but if locals chose to tamper therewith, no case of negligence of DESU / DVB could be said to have been made out;

(VI) that the outcome of the FIR / criminal prosecution was not known;

(VII) that the appellants / plaintiffs had also not proved as to what were the earnings of the deceased.

Accordingly, it was held that neither was there any negligence on the part of DESU / DVB to be held liable for compensation nor had

the appellant / plaintiff been caused any loss.

7. The counsel for the appellants has drawn attention to ***M.P. Electricity Board Vs. Shail Kumari*** I (2002) ACC 271 where the Supreme Court *inter alia* held, (A) that the liability to compensate for injury or death of a person unknowingly trapped is of the supplier of electricity energy; (B) that so long as the electricity transmitted through the wires is potentially dangerous, 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; (C) it is no defence on the part of the supplier of electricity that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line; (D) that it is the lookout of the manager of the supply system to prevent such pilferage by installing necessary devices; (E) that if any live wire got snapped and falls on the public road, the electric current thereon should automatically have been disrupted; (F) that the authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps; (G) that 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; (H) that the liability cast on such person is strict liability not dependant on negligence or fault.

8. An analysis of the aforesaid judgment does indeed show that the sole defence of the respondents, of the DESU / DVB as supplier of electricity being not liable for the reason of the electricity wire causing electrocution having snapped on account of act of another is no defence in law.

9. To be fair to the counsel for the respondent No.2 NDPL which is the successor of DESU / DVB to the extent of supplying the electricity, he has not controverted the aforesaid position save in stating that according to the respondent No.2 NDPL the liability is of the respondent No.3 DPCL and the decree if any against the respondent No.2 NDPL should be with liberty to the respondent No.2 NDPL to recover the decretal amount from the respondent No.3 DPCL.

10. As far as the quantum of compensation is concerned, I am satisfied that the same is on the lower side, even as per the format prescribed under the Motor Vehicles Act, 1988.

11. Accordingly, the appeal is allowed; the judgment and decree of the learned Additional District Judge is set aside; the suit of the appellants / plaintiffs is decreed for recovery of Rs.4,50,000/- from the respondent No.2

NDPL together with interest thereon at 7% per annum from the date of institution of the suit till the date of payment.

12. However no costs.

13. Decree sheet be prepared.

14. The aforesaid would be without prejudice to the claim of the judgment debtor to recover / adjust the said amounts from / from the dues of the respondent No.3 Delhi Power Company Limited.

15. The appellants / plaintiffs No.2&3 who were minors at the time of institution of the suit as well as the appeal must, by now be majors. More than 20 years having already passed since the institution of these proceedings; it is not deemed necessary to defer the disbursement of the compensation amount. It is however deemed appropriate that 50% of the compensation / decretal amount be paid to the appellant / plaintiff No.1 being the widow who was stated to be having a daughter also of the deceased and the balance 50% be made payable to the appellants / plaintiffs No.2&3 being the sons of the deceased.

RAJIV SAHAI ENDLAW, J.

AUGUST 06, 2015/bs

(corrected & released on 21st October, 2015)