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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

*SECOND APPEAL NO. 600 OF 2014
with
CIVIL APPLICATION NO. 1432 OF 2014*

The Municipal Corporation of
City of Pune. ... Appellant/Applicant.

V/s.

Mr. Dilip Mahadev Marane and Ors. ... Respondents.

*and
SECOND APPEAL (St.) NO. 30069 OF 2014
with
CIVIL APPLICATION NO. 1525 OF 2014*

Maharashtra State Electricity
Distribution Company Limited. ... Appellant/Applicant.

V/s.

Mr. Dilip Mahadev Marane and Ors. ... Respondents.

Mr. P.N. Joshi a/w. Rajdeep Khadapkar for the Appellant in SA 600/14 and for the Applicant in CAS 1432/14 and for Respondent No.3 in SA(st.) 30069/14.

Mr. Anuj Jaiswal a/w. Nirav Shah i/b. Little & Co. for the Appellant in SA(st.) 30069/14 and for the Applicant in CAS 1525/14 and for Respondent No.3 in SA 600/14.

Mr. Priyal Sarda for Respondents 1 & 2 in SA 600/14 and for Respondents 1 & 2 in SA(st.) 30069/14.

CORAM : N.M. Jamdar, J.

22 June, 2016.

Oral Order :-

The Second Appeal No. 600 of 2014 is filed by the Municipal Corporation of City of Pune. Second Appeal (St.) No. 30069 of 2014 is filed by Maharashtra State Electricity Distribution Company Limited, Pune. Both these Appeals challenge the judgment and orders passed by the learned Civil Judge, Junior Division, Pune and the learned District Judge, Pune dated 5 July 2012 and 26 March 2014 wherein the Suit filed by the Respondents was decreed and the respective Appeals filed by the Appellants were dismissed. The learned Civil Judge had decreed the Suit and had granted damages/compensation of Rs.5,50,000/- with interest at the rate of 6%.

2. The Plaintiffs are the relatives of deceased Amey, who was 22 years old at the time of his death. On 4 September 2007, the deceased, on the way back from a festival along with his friends had gone to answer nature's call. Since he did not return, the friends came to look for him and found that he was electrocuted and struck

to an electrical pole. He was taken to the hospital, however he died of electrocution. The Plaintiffs claimed that the deceased was 22 years old, earning Rs.5,500/- per month, and accordingly, sought damages at the rate of Rs.5,50,000/-. In the Suit, both the Appellants were party Respondents. The Appellants filed their written statements and contested the claim of the Respondents – Plaintiffs. The learned Civil Judge found that the death of Amey occurred due to negligence on the part of both the Appellants and the Plaintiffs were entitled for compensation. The learned District Judge confirmed the factual findings rendered by the learned Civil Judge and dismissed both the Appeals.

3. I have heard the learned Counsel for the parties.

4. The learned Counsel for the Appellant – Corporation submitted that there is no evidence as regard how the incident took place as the friends, who were stated to have been with the deceased, were not examined. This submission cannot be accepted. An Electrical Inspector had submitted his report in which it was clearly stated that there was a leakage of electricity from the pole which was not maintained and the incident took place because of the leakage. The burden of proof in the criminal trial and the civil suit filed for damages is entirely different. This is not a case where any criminal liability being foisted on either of the authorities so as to insist on an

eye-witness. There was no warrant for the Electrical Inspector to give any incorrect report. The report is given pursuant to a statutory enquiry made under Section 161 of Electricity Act. Both the Courts have rendered a finding of fact and have chosen to accept the Electrical Inspector's Report.

5. The learned Counsel for the Appellant – Corporation then submitted that the deceased ought not to have gone to answer nature's call near the pole and it should be taken as a contributory negligence and for this purpose both the authorities should not be held responsible. It is unfortunate that such submission is made by a Municipal Corporation. The state of affairs as they exist regards the infrastructure and the lack of any public amenities, which the Corporation supposed to provide, the residents are often rendered helpless in these matters. The Municipal Corporation, which is supposed to provide the public amenities, ought not to address such arguments of contributory negligence in the first place.

6. As far as the liability of both these Appellants are concerned, it has come on record that it is the duty of Municipal Corporation to maintain the electrical pole. The Appellant – Electricity Company uses this pole for transmission of electricity. The learned Counsel for the Municipal Corporation submitted that the liability should be apportioned with 25% on the Municipal

Corporation and 75% on the Electricity Company. The learned Counsel for the Appellant – Electricity Company pointed out that it was equally the responsibility of Municipal Corporation to maintain the poles.

7. The Municipal Corporation provides the infrastructure through which electricity is transmitted by the Electricity Company. Therefore, if the work of transmission of electricity is carried out in tandem by these two authorities. One provides infrastructure and the other uses the infrastructure to transmit the electricity. It is therefore the responsibility of both the authorities to carry out the periodical checks to ensure that incident such as the ones not occur. Both the Courts have held that both the Appellants are jointly liable to pay the compensation. In my opinion, the responsibility will have to be shared by the Appellants in the ratio of 50% each.

8. There is no error of law, nor any substantial question of law arises. In the circumstances, both the Appeals cannot be entertained and are dismissed.

9. Both the Appellants in their Appeals have deposited the decretal amount in their respective Appeals. It is clarified that the liability of both the Appellants to pay the decretal amount to the Respondents – Plaintiffs will be at the rate of 50% each. It is

informed that both the Appellants had deposited the amount alongwith interest. The Registry will accordingly permit the Respondents – Plaintiffs to withdraw 50% of the amount deposited with accrued interest, if any, each in the respective Appeals and the Appellants in each of these Appeals will be entitled to refund of remaining 50%, with accrued interest, if any.

8. Civil Applications are disposed of accordingly.

(N.M. Jamdar, J.)