

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

A.S.Nos.378 of 1998 & 560 of 2009

A.S.No.378 of 1998

1. Indrani Ammal
 2. Appavoo alias Muniraj (died)
 3. Lakshmi Ammal ...Appellants 1to3/Plaintiffs 1to3
 4. Karunakaran
 5. Sivamurugan
 6. Rani
 7. Laliltha ...Appellants 4to7/Plaintiff 5to8
 8. Mani
 9. Ramesh
 10. Natarajan
 11. Murali
 12. Chandra
 13. Kasthuri
 14. Kavitha
 15. Jayapal
 16. Jayanthi
 17. Ilayarani
 18. Mohanavel
 19. Pushparaj ...Appellants 8to19
- (Appellants 8 to 19 brought on record
as LR's of the deceased 2nd Appellant
vide order dated 12.02.02 made in
CMP.No.5515/99)

Vs.

1. Venkatesa Naidu
2. Dhanapal Naidu
3. Ramachandra Naidu
4. Srinivasa Naidu ...Respondents 1to4/Defendants 2to5
5. Samikannu Naidu (deceased))
6. Mangammal
7. Amsa Ammal
8. Kusalammal
9. Radha Ammal ...Respondents 5to9/
Defendants 6to10
10. Govindasamy
11. Varadara

12. Devaraj
13. Ethiraj ..Respondents 10to13
(Respondents 10 to 13 brought on
record as LRs of the deceased
5th respondent vide order dated
17.06.04 made in CMP.No.7351/02)

A.S.No.560 of 2009

1. Venkatesa Naidu
2. Dhanapal Naidu
3. Ramachandra Naidu
4. Srinivasa Naidu
5. Samikannu Naidu
6. Mangammal
7. Amsa Ammal
8. Kusalammal
9. Radha Ammal ..Appellants 1to9/
Defendants 2to10

Vs.

1. Indrani Ammal
2. Appavoo alias Muniraj (died)
3. Lakshmi Ammal ..Respondents 1to3/
Plaintiffs 1to3

4. Karunakaran
5. Sivamurugan
6. Rani
7. Laliltha ..Respondents 4to7/Plaintiffs 5to8

Prayer:- These First Appeals are filed under Section 96 of Civil Procedure Code against the Judgment and decree made in O.S.No.123 of 1988 dated 06.08.1997, on the file of the Court of Subordinate Judge, Tirupattur.

For Appellants in A.S.No.560 of 2009
and For Respondents in A.S.No.378 of 1998 : Mr.R.Sunil Kumar
R1to4 & 6to9 R19 to 13 : No Appearance
For Appellants in A.S.No.378 of 1998
and For Respondents in A.S.No.560 of 2009 : Mrs.P.Srividhya
for
M/s. S. Visvanathan

COMMON JUDGMENT

Both the appeals arise out of the Judgment and decree in O.S.No.123 of 1988 dated 06.08.1997, on the file of the Court of Subordinate Judge, Tirupattur. The suit was filed by the appellants/plaintiffs in A.S.No.378 of 1998, seeking compensation of Rs.4,00,000/- for the death of Ramu, son of first and second plaintiffs aged about 20 years and Sekar, son

of third and fourth plaintiffs, aged about 15 years due to electrocution.

2. According to the plaintiffs the defendants owned lands at Ponnampali Village and are having electricity service connection in SC.No.12, which is meant for motor pump set in the well. The said pump set is used for irrigating the lands belonging to the defendants. The said electricity service stands in the name of the first defendant and the other defendants belong to the joint family of the first defendant and the first defendant is the manager of the joint family. According to the plaintiffs, the cattle belonging to them had gone for grazing to the forest situated near the lands of the plaintiffs as well as the defendants on 11.04.1984. Since, about six numbers of cattle did not return, the deceased boys namely, Ramu and Sekar aged about 20 and 15 respectively, went in search of the cattle. They also did not return and when the members of the plaintiffs' family along with other men went searching for them, the bodies of the two boys were found in the land belonging to the defendants and they had burn injuries caused due to the electrocution. Immediately, Police complaint was lodged and criminal case was also filed against the defendants. The Postmortem report revealed that both the boys had died of electrocution.

3. According to the plaintiffs, the defendants had cultivated groundnut in their land bearing survey No. 654/3 and in order to protect the said groundnut crop, they unauthorizedly connected a metal wire to the electric lines and laid it around the land. The said live wire was invisible and there was no warning sign also. The boys who went searching for the cattle had trampled upon the wire, which caused the death. Claiming that the elder of the two ie., Ramu was expert in agriculture and younger one Sekar was a bright student and their death caused mental agony apart from huge loss. Hence, the plaintiffs filed the suit claiming, a sum of Rs. 4,00,000/- as compensation for the death of the boys.

4. The defendants filed a written statement and contended that the electricity service connection in survey No. 654/3 stands in the name of the first defendant and there is no joint family. There has been a partition in the family and the other defendants are divided brothers. The first defendant also pleaded that the claim of the plaintiffs regarding the laying of the electric wire in the lands of the defendants was denied. It was also claimed that the bodies of the boys were recovered far away from their lands and the criminal case filed against the defendants also ended acquittal. Therefore, the defendants claimed that though the death was caused due to electrocution, since it has not been established that the electrocution happened due to the live wire laid by the defendants in their lands and the fact that they were acquitted in the criminal case, would dis-entitle the plaintiffs from seeking compensation from the defendants.

5. The Trial Court after considering the pleadings, framed the following issues :-

1. Whether the plaintiffs are entitled to damages as prayed for?
2. What is the relief the plaintiffs are entitled to?

6. On the side of the plaintiffs P.W. 1 to 4 were examined and Ex.A.1 to 9 were marked. On the side of the defendants D.W.1 to 4 were examined and Ex.B.1 to 9 were marked. Ex.C.1 - a summon issued to D.W.2 was marked as a Court document.

7. On examination of the oral and documentary evidence the learned Subordinate Judge, Tiruppur came to the conclusion that the death was due to electrocution caused by the negligent act of the defendants in laying the live wire on their land without any warning. The learned Subordinate Judge relied upon the testimony of P.Ws.2 and 3, neighboring land owners and also the proceedings before the criminal Court to reach the above conclusion. The fact that the death was caused due to electrocution was confirmed by examining the Doctor, who conducted the postmortem and the postmortem reports were marked as Ex.A.5 and A6.

8. On the above findings the learned Subordinate Judge, came to the conclusion that plaintiffs are entitled to their claim. In the computation of damage the learned Subordinate Judge came to the conclusion that the plaintiffs are entitled to get compensation of Rs.50,000/- for each of the two boys and granted a decree of Rs.1,00,000/- against the defendants 2 to 6 personally and against the defendants 2 to 5 and 7 to 10 from the estate of the deceased first defendant, since he died pending suit and the defendants 7 to 10 were impleaded as his legal representatives. Aggrieved by the said decree the plaintiffs have filed an appeal in A.S.No. 378 of 1998 and the defendants have filed an appeal in A.S.No. 560 of 2009.

9. Heard Mrs. Srividya, learned counsel for the appellants in A.S.No.378 of 1998 and respondents in A.S.No.560 of 2009 and Mr.R.Sunil Kumar, learned counsel for the appellants in A.S.No.560 of 2009 and respondents in A.S.No.378 of 1998.

10. The following questions are arrived in the above cases:

1. Whether the plaintiffs are entitled to compensation for the death of the two boys?
2. If so, what is the quantum of compensation that is, to be awarded to the plaintiffs?

3. Whether the lower Court has rightly awarded the cost of the proceedings to the plaintiffs?

11. It is a definite case of the plaintiffs that defendants in order to protect their crop (groundnut) had laid the live wire around their lands and the two boys who went to search of their cattle had accidentally trampled upon the said live wire which resulted in their death. In order to prove their case the plaintiffs had examined three witnesses viz., P.Ws.1 to 3. P.W.2 and 3 are independent witness. From the perusal of the deposition of P.Ws.2 and 3, it is clear that the electrocution was caused by the live wire which was laid by the defendants. P.Ws. 1 to 3 deposed that the electrocution happened only due to the live wire which was laid in such manner that it was not visible. They also further stated that there was no warning sign or board. It is also claimed that the action of placing the live wire itself is illegal. The lower Court relied upon the evidence of three witnesses and found that their evidence is reliable and acceptable. It should also be pointed out that there was no question in the cross examination of the witness to the effect that said live wire was not placed by the defendants or claim of the three witness that said wire was seized by the police was not correct.

12. Mr.R.Sunil Kumar, learned counsel for the appellants in A.S.No. 560 of 2009 would vehemently contend that the absence of concrete proof to establish the placing of live wire by the defendants, coupled with the fact that the bodies were recovered about two furlongs away from the land of the defendants would at least show that death was not due to placing of live wire in the lands of the defendants. He would also heavily rely upon the fact that the defendants were acquitted in the criminal case.

13. It is settled law that finding with regard to the acquittal in the criminal case cannot be a determining factor for fixing the liability in the suit for damages. Though the judgment in the criminal case has not been made part of the record, Mr.Sunil Kumar, learned counsel has produced the copy of the same and I find that it is an acquittal based on benefit of doubt. It is also seen from the said judgment that the witness P.W.2 had turned hostile and the investigation officer has avoided the box. I find that it is a wholly unsatisfactory trial and the learned Judicial Magistrate has passed an order of acquittal based on lack of evidence. The postmortem report marked as Ex.A.5 and A.6 as well as the evidence of the Doctor, proved that the reason of death is due electrocution. The evidence of P.Ws. 2 and 3, if taken as a whole establishes that the reason of the death as alleged in the plaint is highly probable. Though the defendants have chosen to examine three witnesses on their side who are claimed to be independent witnesses, I find their evidence it is wholly unreliable and untenable. The D.W.2 and

3 are the witnesses who turned hostile in the criminal proceedings. D.W.4's evidence is far from satisfactory and it is seen from the cross examination that he is not in any way connected with the suit village. He ought to have shown that he belongs to the suit village and he admitted that he is living in Dharmapuri District for the past six years ie., at least from 1991. This creates an doubt as to the credibility of the said witness. He was also unable to answer questions relating to the date of death and other material facts. The learned Subordinate Judge had, after appreciating entire evidence, come to the conclusion that the cause of death, namely laying of live electric wire around their lands by the defendants, has been proved by the plaintiffs. I have read the evidence on record and I find that the said conclusion is reasonable and it is not against the evidence on record to call for interference in this appeal. Therefore the first point is answered against the defendants.

14. In A.S.No.378 of 1998, the appellants/plaintiffs have sought for enhancement of the compensation amount awarded by the trial Court. The learned Subordinate Judge has not given any reason or basis on which he came to the conclusion on the quantum of compensation and awarded a sum of Rs.50,000/- each as compensation. Admittedly, both boys were unemployed and one was going to school. The total claim itself was only Rs.4,00,000/- at the rate of Rs.2,00,000/- each. Even if the multiplier method of calculation adopted under the Motor Vehicles Act is applied, the compensation, payable would be much higher than what has been claimed. Though some evidence is sought to be let in regarding the income of one of the deceased persons namely Ramu, there is no cogent or reliable evidence on the actual income and it is claimed that agricultural income had increased, after Ramu started taking care of the land. No doubt the Kist receipts have been produced and I find the evidence relating to income is laconic. Taking into account the facts and circumstances, I am of the view that a sum of Rs. 2,00,000/- per head would be just and reasonable compensation. The second point is answered in favour of the plaintiffs.

15. The learned Subordinate Judge, while granting compensation of a sum of Rs. 50,000/- each for the death of the two children had also denied cost to the plaintiffs. If the suit is decreed in part, at least proportionate cost should have been allowed. I am therefore of the opinion that the directions of the learned Subordinate Judge to the plaintiffs to bear their own cost in full are to be interfered with. Hence I interfere with the discretion exercised by the learned Subordinate Judge in awarding costs.

16. In view of the above conclusion A.S.No. 560 of 2009 will stand dismissed without cost. The appeal in A.S.No. 378 of 1998 will stand allowed and the suit in O.S.No. 123 of 1988 will stand decreed as prayed for, for a sum of

Rs.3,00,000/- and the plaintiffs would be entitled to full costs both in the appeal as well as before the trial Court. "Though, I have concluded that the plaintiffs are entitled to get Rs.4,00,000/- as damages, the plaintiffs in their appeal in A.S.378 of 1998 had restricted their claim of compensation to Rs.3,00,000/-". Hence the suit in O.S.No. 123 of 1988 will stand decreed for a sum of Rs.3,00,000/- with interest at the rate of 12% p.a., from the date of suit till the date of the decree and 6% thereafter. In other respects the judgement and decree of the learned Subordinate Judge are confirmed.

17. In the result, A.S.No.560 of 2009 is dismissed without costs and A.S.No.378 of 1998 is allowed granting a sum of Rs.3,00,000/- (Rupees three lakhs only) as compensation with interest at the rate of 12% from the date of suit, till the date of decree and 6% thereafter. As regards costs, the plaintiffs are entitled to the costs in the trial Court as well as in this appeal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rts

To

The Subordinate Judge, Tirupattur.

+ 1 cc to M/s. R. Sunil Kumar, Advocate SR.72256

A.S.Nos.378 of 1998 & 560 of 2009

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