

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.1352 OF 2008

JUDGMENT:

This Second Appeal, under Section 100 C.P.C., is filed by defendant Nos.1 to 3 in O.S.No.72 of 2003 on the file of the Senior Civil Judge, Kamareddy, who are the appellants in A.S.No.41 of 2005 on the file of the Principal District Judge, Nizamabad being unsuccessful throughout.

2. For convenience of reference, the ranks given to the parties in the trial Court will be adopted throughout the judgment.

3. The plaintiffs filed the suit for recovery of an amount of Rs.3,00,000/- towards damages from the defendants alleging that on 30.9.2001, Kunchepu Rajavva, aged about 40 years, wife of plaintiff No.1, attended to agricultural work in the field to cut green grass along with her son - plaintiff No.2 and she could not observe the live electric line lying in the field of one Penugonda Sailoo and while passing, she met with electric shock and died on the spot. The electric shock was due to the negligent act of the defendants who were under an obligation to maintain the live electric lines properly.

A crime for an offence punishable under section 304-A I.P.C. in Crime No.148 of 2001 was registered against the defendants and a post mortem examination was held on the dead body. The Post Mortem Doctor opined that the cause of death was due to "Cardio respiratory failure due to electrical shock".

It is further contended by the plaintiffs that the deceased Rajavva was earning Rs.100/- per day by attending agricultural work and on account of her untimely death, they lost their dependency besides loss

of love and affection and prayed to pass a decree granting damages of Rs.3,00,000/- under various heads against the defendants.

4. Defendant Nos.1 and 2 filed written statement denying material allegations including the age, income of deceased and contribution to the family by deceased Rajavva. It is the specific contention of defendant Nos.1 and 2 that agriculture service bearing No.124 pertaining to the agricultural land of Penugonda Sailoo was disconnected from 21.4.2001 due to non-payment of arrears of electrical consumption charges and it appears that the said Sailoo, without the knowledge of the defendants, illegally taped power from the line to his service and extended to his hut by putting a temporary wire and the said Rajavva might have come into contact with the said extension wire and died on the spot. Therefore, there is no negligence on the part of the defendants and prayed for dismissal of the suit.

5. Basing on the above pleadings, the trial Court framed the following issues:

“1. Whether death of K.Rajavva occurred due to negligent act of The A.P.Transco?

2. Whether the defendants are liable to pay compensation of Rs.3,00,000/- to the plaintiffs?

3. To what relief?”

6. During trial, on behalf of the plaintiffs, P.W.1 was examined and Exs.A-1 to A-3 were marked and on behalf of the defendants, D.Ws.1 to 3 were examined and no documents were marked.

7. Upon hearing the argument of both counsel, considering the oral and documentary evidence on record, the trial Court granted compensation of Rs.1,00,000/- in favour of the plaintiffs. Aggrieved by the judgment and decree of the trial Court, defendant Nos.1 to 3 in

O.S.No.72 of 2003 on the file of the Senior Civil Judge, Kamareddy preferred A.S.No.41 of 2005. The plaintiffs, being the respondents, filed Cross Objections under Order XLI Rule 22 C.P.C. dissatisfied with the quantum of compensation awarded by the trial Court.

8. The first appellate Court, while dismissing the first appeal, enhanced compensation to Rs.1,92,000/- from Rs.1,00,000/- by partly allowing the cross objections filed by the plaintiffs before the first appellate Court by applying multiplier '16' to the age group of 40-45 and taking Rs.12,000/- per annum as income of deceased Rajavva.

9. Aggrieved by the judgment in the first appeal, the present appeal is preferred by defendant Nos.1 to 3 raising various contentions.

10. The Second Appeal is filed in the year 2008 and till today, it is not admitted and coming on for admission. Therefore, there is no point in admitting the appeal after eight years from the date of filing the appeal.

11. Consequently, heard the learned counsel for the appellants and the respondents at the stage of admission at length.

12. Learned counsel for the appellants only contended that enhancement of compensation from Rs.1,00,000/- to Rs.1,92,000/- is abnormal and not based upon any evidence. Therefore, the first appellate Court ought not to have enhanced the compensation without any fresh evidence.

13. The respondents supported the decree of the first appellate Court in all aspects.

14. Considering the contentions of both the counsel, now, the substantial question of law that arises for consideration is:

“Whether enhancement of compensation from

Rs.1,00,000/- to Rs.1,92,000/- by partly allowing the cross objections is based on any evidence? If not, perverse?”

In Re Point:-

15. Undisputedly, deceased Rajavva was aged 40 years as on the date of death and the same is supported by Post Mortem report where her age was reported as 40 years as on the date of her death. The deceased was earning Rs.100/- per day as an agricultural coolie, but it was not supported by any evidence. In the absence of any evidence, the Court can take into consideration the wage payable to an agricultural coolie as her income and it would not be not less than Rs.1,000/- per month as on the date of occurrence of incident.

16. It is difficult to prove the income of an agricultural coolie but based on the facts and circumstances of the case, the Court can fix the income of an agricultural coolie.

17. As per the judgment in **Laxmidevi and others v. Mohd.Tabbar and another**^[1], in the absence of any proof of income, the deceased can be treated as an unskilled labourer, whose income can be taken as Rs.3,000/- per month. If that is applied, the total income of the deceased would be Rs.36,000/- per annum, but the trial Court and the first appellate Court took the income of the deceased as Rs.12,000/- per annum and applied multiplier “16”. By following the principle laid down in the judgment and applying multiplier as per Sarla Varma’s case, the total compensation payable for the death of Rajavva would be $\text{Rs.36,000/-} \times \frac{2}{3} \times 16 = \text{Rs.3,84,000/-}$ since $\frac{1}{3}^{\text{rd}}$ shall be deducted towards personal expenses and $\frac{2}{3}^{\text{rd}}$ shall be contributed to the family. The appellate Court partly allowed the cross objections and enhanced the compensation from Rs.1,00,000/- to Rs.1,92,000/-. Though the plaintiffs are entitled to more compensation, no cross

appeal or cross objections are filed and in the absence of cross objections or appeal, this Court, while exercising the power under Section 100 C.P.C., cannot enhance the compensation granted by the first appellate Court.

18. Considering the facts and circumstances of the case, I find that it is a fit case to affirm the judgment and decree passed by the first appellate Court enhancing the compensation from Rs.1,00,000/- to Rs.1,92,000/-.

19. As far as the other ground i.e., negligence is concerned, the defendants themselves admitted that one Sailoo illegally arranged a wire connecting to his pump set, but it is the duty of the defendants to remove the said connections, but failure to take such care would amount to negligence on the part of the defendants.

20. It is the case of the respondents that the incident occurred due to the negligence of the officials of the Electricity Department. In this regard, this Court already decided a similar issue in **Appeal Suit No.954 of 1994 (The Section Officer and Assistant Engineer Operation, Sub Station, A.P.S.E.B., Choutuppal vs. Balam Laxmamma)**, wherein it is held as under:-

“The law casts a duty upon the Electricity Department of the defendant State to properly maintain the electric installation and lines carrying the electric energy. The failure on the part of Electricity Department to properly maintain the lines carrying the electrical energy makes them liable to compensate, if any injury is caused to a citizen consequently. Wherever the negligence in maintaining the electric installations is denied, a legal obligation is cast upon the department to rebut the presumption with positive evidence to show that they had been maintaining the power supply system in accordance with the standards accepted and the provisions of law forming part of the Electricity Act and the rules made thereunder. As and when it is proved that a citizen was electrocuted from a live wire hanging down from an electric pole, there is a presumption of fact that there was

negligence of proper care and caution on the part of Electricity Department entrusted with the job of managing and controlling the power supply system. The maxim res ipsa loquitur is a principle which aids the court in deciding as to the stage at which the onus shifts from one side to the other. Where a particular state of affair is shown to be under the management of a department or their servants and the accident takes place which in the ordinary course of things would not happen, it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from want of care. Winfield in his famous Treatise on Tort has mentioned two requirements to attract the above principle. They are (i) that the 'thing' causing the damage be under the control of the defendant or his servants, and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence."

21. In another decision reported in **M.Bheemavva vs. A.P.S.E.B.,**
Vidyut Soudha Bhavan ^[2], it is held as under:

"In assessing the quantum of damages the principles adopted by the Courts for determination of compensation to be awarded in fatal accident cases under the Motor Vehicles Act, 1988 can be adopted in the instant case. The deceased was aged 25 years at the time of his death and it is clearly established from the evidence of P.Ws 2 and 3 and the accounts of the Toddy Tappers Co-operative Society which are marked as Exs.A3 to 6 that the total earnings of the deceased was due to the tune of Rs.16,800/- per annum. The lower Court also accepted the same and found that the total income of the deceased was to the tune of Rs.16,800/- per annum. His family consisted of himself, his wife, his mother and one minor son i.e., three adults and one child. As per the decision of the Supreme Court in U.P. State Road Transport Corpn. V. Trilok Chandra, (1996) 4 SCC 362 = 1996 (4) ALD (SCSN) 9, the family of the deceased consists of 7 units at the rate of two units for adult and one unit for child. Deducting two units for the deceased, the rest of the family members, who are dependent on him comprise five units. The pecuniary loss suffered by the plaintiffs on account of the death of the deceased can be arrived at by deducting the amount which must have been normally spent by the deceased for his personal expenses from his total earnings. Since the total number of units is 7, $\frac{2}{7}^{TH}$ of the total income

can be deducted towards the personal expenses of the deceased and the remaining 5/7th of the total earnings can be taken as his contribution to his family members which is also known as 'the annual dependency'. It comes to Rs.12,000/- per annum i.e., 5/7 x 16,800. This can be taken as the annual loss to the dependents. This has to be multiplied by the appropriate multiplier to assess the compensation under the head of 'loss of dependency'. Though the appropriate multiplier is 18 in the case of a person who died at the age of 25, since the plaintiffs have claimed loss of earnings for 15 years only, the multiplier can be adopted as 15 in the instant case. On this basis the compensation payable to the plaintiffs under the head of 'loss of dependency' comes to 15 x 12,000/- = Rs.1,80,000/-. Adding the sum of Rs.25,000/- which was claimed as special damages towards pain and suffering, loss of consortium etc., the total compensation payable to the plaintiffs will come to Rs.2,05,000/-."

In the above judgment, it is held that when the death was due to electrocution, by applying the principle of *res ipsa loquitur* i.e., things speaks for itself, Court can conclude that the accident occurred due to negligence of the Electricity Department. In view of the decision referred supra, the act of failure of the defendants in maintaining live conductors is clear negligence. Thereby, the trial Court rightly held that the death was due to the negligence of the defendants and it warrants no interference of this Court. Accordingly, the point is held in favour of the respondents/plaintiffs and against the appellants/defendants.

22. There are no specific guidelines for awarding compensation in case of electrocution. In the judge made law referred supra in **1997(6) ALD, page 217 (AP)**, it is held that in assessing quantum of compensation, the principles adopted by the Courts for determination of compensation to be awarded in fatal accident cases under the Motor Vehicles Act, 1988 has to be taken into consideration.

23. In one of the judgments, this Court held that the principles that are applicable to the motor accident claim can be applied to assess

the compensation even in the claim for death due to electrocution. If that principle is applied, the multiplier applicable to the claimants under the Motor Vehicle Act can be taken into consideration and the Court is bound to assess the compensation payable for the death of Rajavva due to electrocution based on the guidelines under the Motor Vehicles Act. As discussed in para No.17 above, the compensation payable to plaintiffs on account of death of Rajavva would be Rs.3,84,000/- by applying principles laid under Motor Vehicles Act, but the first appellate Court granted only Rs.1,92,000/- which is less than what plaintiffs are legitimately entitled. Therefore, no further evidence need be adduced and the evidence available on record and considered by first appellate Court is enough to grant decree. Hence, I find no perversity in the judgment and decree.

24. The appellate Court did not consider the actual income of an agriculturist as on the date of death of Rajavva and in case of death, $\frac{1}{3}^{\text{rd}}$ shall be deducted towards her personal expenses and $\frac{2}{3}^{\text{rd}}$ alone shall be taken into consideration. However, considering the facts and circumstances of the case, the contribution by Rajavva to the family would be around Rs.12,000/- per annum and the total compensation payable under the head of loss of dependency would come to Rs.1,92,000/-. The trial Court did not consider the appropriate multiplier and the income for assessment of compensation for the death of Rajavva due to electrocution. The dependants also are entitled to claim compensation under the head of "loss of love and affection" and "loss of consortium", but the trial Court did not grant compensation under those two heads and the first appellate Court also did not award any compensation, but no cross objections or independent appeal is filed. Therefore, this Court need not examine the entitlement of the plaintiffs to claim compensation under the head of "loss of consortium" and "loss of love and affection". Therefore, by applying the principle of *res ipsa loquitur*, the Court came to the

conclusion that the electrocution occurred only due to the negligence of the defendants. Both the trial Court and the first appellate Court, based on evidence, recorded a fact finding that the accident occurred only due to the negligence of the defendants, which warrants no interference of this Court.

25. In view of my foregoing discussion, I find no ground to interfere with the quantum of compensation awarded by the first appellate Court while allowing the cross objections under Order XLI Rule 22 C.P.C. and the same is hereby confirmed answering this question against the defendants and in favour of the plaintiffs since the evidence on record is sufficient to award compensation as awarded by the first appellate Court.

26. In the result, the Second Appeal is dismissed, but without costs in the circumstances of the case.

27. Miscellaneous Petitions pending, if any, in this Second Appeal shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 17.8.2016
AMD

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[\[1\]](#) 2008 ACJ page 1488
[\[2\]](#) 1997 (6) ALD (A.P.)