

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1715 of 2016 (O&M)

Date of decision: 12.05.2016

Punjab State Electricity Board

.....Appellant

Vs.

Dyal Kaur and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE AMOL RATTAN SINGH

- (1) To be referred to the Reporters or not? yes
- (2) Whether the judgment should be reported in the Digest? yes

Present:- Mr. Sandeep Chhabra, Advocate, for the appellant.

AMOL RATTAN SINGH, J.

CMNo.4699-C of 2016

Learned counsel for the applicant-appellant has filed in Court today, an affidavit giving greater details for the reasons for delay in refiling the appeal, to the effect that he had changed his office from one place to another, as given in the affidavit, and the original papers got misplaced during the shifting and it was only thereafter, after the papers were retraced, that the appeal was filed.

The reasons given in the affidavit are accepted and the delay of 194 days in refiling the appeal, is condoned.

The application is allowed.

RSA No.1715 of 2016

This is the second appeal filed by the defendant-Punjab State Electricity Board (now re-named as the Punjab State Power Corporation Limited), after the suit filed by the two respondents herein (herein after referred to as the 'plaintiffs'), seeking recovery of damages/compensation on account of the death of their son, Nikka Singh, was decreed to the extent that compensation was awarded for a sum of Rs.5,50,000/-, along with interest thereupon @ 6% per annum, as against the damages of Rs.10 Lacs sought by the plaintiffs.

2. The facts, taken from the judgment of the learned Civil Judge (Sr.Divn.), Mohali, are that the plaintiffs had filed a suit stating that their son, Nikka Singh, was coming from the public toilets of Village Matour, on 23.06.2006, on his bicycle. When he reached near the Government High School in the village, an electric wire got trapped in the front tyre of his bicycle, due to which he unfortunately died on the spot, due to electrocution. The said wire is stated to have broken away from the electric pole installed up by the Electricity Board.

At that time, the brother of the deceased, Harnek Singh, was present on the spot but was unable to save him, despite attempting to do so. One Nirmal Singh also reached the spot and released the deceased from the electric wire, by using some wood. However, Nikka Singh was declared dead upon his having been taken to the Chawla Nursing Home.

It was further contended that when the wire had broken and

fallen on the ground, the shopkeepers of the village had informed the officials of the Board to repair it, but they did not do so.

4. FIR No.283 dated 23.06.2006 was also registered at Police Station Phase 1, Mohali, against the officials of the Electricity Department, for having committed an offence punishable under Section 304-A of the IPC. However, allegedly due to pressure upon the local police, no further action was taken by them.

5. Nikka Singh was stated to be 22 years old, doing the business of dairy farming, owning about 20 buffaloes, from which he earned Rs.20,000/- per month. It was further stated in the plaint that due to the shock of her sons' death, plaintiff No.1 had become blind. It was further alleged that no body was thereafter looking after the plaintiffs, as they were dependent on the deceased.

Consequently, compensation/damages of Rs.10 Lacs were claimed by them in the suit.

The suit itself was filed in *forma pauperis*, and after obtaining evidence in that regard, the plaintiffs were permitted to sue as such.

6. Upon notice issued, the defendants (the Board through their Chairman and various officers of the Board), appeared and filed a written statement raising objections of maintainability and further stating that even pursuant to the FIR lodged by Harnek Singh, it was stated that at about 3 p.m., due to storm and rain, a wire from an electric pole near the High School of village Matour had broken and

Harnek Singh and his younger brother, while returning from the toilets, crossed the said wire and Nikka Singh died due to an electric shock, which was beyond the control of the Board as it was an "act of God", the wires having fallen due to the storm and rain. It was further contended by the appellant-defendants (hereinafter referred to be as "the defendants") that in fact the deceased, upon seeing the wires, should have been more careful himself while crossing them and in case he had taken normal precautions, the occurrence would not have happened.

It was further submitted that the complaint with regard to the breaking of the wires was actually registered at 4.50 p.m. on 23.06.2006 and immediately the electric current had been disconnected, after which the lineman and another person went to the spot.

7. Other than the above, the income of the deceased being Rs.20,000/- per month was denied by the defendants, further stating that the plaintiffs were not dependent upon him and consequently, no compensation was payable in any case, especially as the deceased had died on account of his own negligence.

(Only for the record, it may be noticed that the written statement is shown to have been filed by five of the six defendants impleaded, including on behalf of the Chairman of the Board, however, defendant No.6, the Deputy Chief Engineer, had not filed a written statement and was proceeded against ex parte.)

Upon a replication having been filed by the plaintiffs to the

written statement, the following issues were framed by the learned Civil Judge:-

“1. Whether the plaintiffs are entitled for recovery of damages/compensation of Rs.10,00,000/- from the defendants? OPP

1-A. Whether Nikka Singh died due to negligence of the defendants? OPP

2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD

3. Relief.”

9. The plaintiffs examined plaintiff-appellant No.2, aforesaid Nirmal Singh and one Amrik Singh, other than Head Constable Mohinder Pal and Dr. Parminder Singh Bhatti, Medical Officer at the Civil Hospital, Mohali, who conducted the post mortem examination on the body of the deceased.

The defendants examined a linesman, Satbir Singh, Senior Xen Gurpreet Singh and closed their evidence.

10. The learned Civil Judge, upon appraising the evidence, found that the factum of the death of Nikka Singh having occurred due to electrocution on contact with the broken electric wires was not disputed by the defendants, but their claim that it was an "act of God" could not be accepted for various reasons.

It was noticed that DW-1, Lineman Satbir Singh, in his cross-examination, stated that he reached the spot after 15-20 minutes,

from a place called Kumbra. He acknowledged that he did not know whether it was the duty of the defendants to disconnect the supply of the electricity in the area due to a heavy storm and rain.

Xen Gupreet Singh Sandhu, DW-2, admitted that it was the duty of the defendants to maintain the electricity wires and to disconnect the electricity supply in case of any apprehension of a storm and rain. However, this witness tried to justify the non-disconnection of the electricity supply on the ground that no phone call was received, with regard to any breakage in the wire and further, that no “breaker” is installed for low transmission lines and as such, none was installed for the electric wire that had broken.

11. Upon considering the aforesaid evidence, as also the evidence of the witnesses of the plaintiffs, who deposed in terms of the plaint, the learned Civil Judge cited various judgments to eventually hold that the rule of strict liability would be applicable upon the defendants, together with the fact that electricity wires breaking down was a foreseeable risk, which the electricity authorities are required to take into consideration while maintaining the electricity lines and ensuring the safety (of the public).

Hence, the death of Nikka Singh was concluded to be due to the negligence of the defendants.

12. As regards the compensation payable to the plaintiffs, i.e. the parents of the deceased, the learned Court found that there was no proof of the deceased earning Rs.20,000/- per month as had been

contended by the plaintiffs but the dependency of the plaintiffs upon the deceased could not be rebutted by the defendants, though they had contended so.

Eventually holding that even as a casual labourer the deceased would have been earning Rs.200-250/- per day, or Rs.5000/- per month, the said amount was taken to be his monthly income, to which a deduction of 50% was applied towards his personal expenses, he being a bachelor, on the ratio of the judgment of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121. Therefore, the monthly dependent income of Rs.2500/-, being Rs.30,000/- annually, a multiplier of '18' was applied, the deceased being 22 years old.

Thus, for loss of dependent income, the plaintiffs were held entitled to a compensation of Rs.5,40,000/-. They were also held entitled to a sum of Rs.5,000/- towards funeral expenses and another Rs.5,000/- towards mental agony. Hence, a total compensation of Rs.5,50,000/- was awarded by the learned Civil Judge to the plaintiffs, upon which interest @ 6% per annum was also awarded, running from the date of the death of the deceased till the realization of the amount.

13. The defendants filed an appeal against the aforesaid judgment of the learned Civil Judge, before the learned Additional District Judge, Mohali.

The first appellate Court, after considering the evidence, also eventually, on the same reasoning, held that the judgment of the

lower Court suffered from no infirmity and consequently dismissed the first appeal, after citing a judgment of the hon'ble Supreme Court in **M.P. Electricity Board Vs. Shail Kumar**, 2002 (1) CCC 685 (SC), wherein it was held that electricity transmission being a potentially dangerous activity, the onus eventually lies upon the electricity supplier to take all safety measures necessary to prevent any escape of electricity from the energy lines. It was further held that even if all such measures were adopted, the liability under the law of torts, to compensate for the injuries suffered by any person, irrespective of any negligence or carelessness on the part of the manager of such undertaking, would still lie upon the electricity supplier.

14. Before this Court, Mr. Sandeep Chhabra, learned counsel for the appellant, essentially made the same arguments as were made before the Courts below, to the effect that the appellant-Board having responded immediately to the complaint received at 4.50 p.m. on 23.06.2006, by switching off the electricity connection and sending two linesmen immediately to the spot, to repair the breakage of wires, and the deceased himself not having taken sufficient precautions to avoid the wires, the Board could not be held responsible for the accident that took place, in which the deceased unfortunately lost his life.

Learned counsel also submitted that in any case the quantum of compensation awarded was much higher than what should have been awarded.

15.

Having considered the aforesaid arguments, I find myself

unable to agree with the same.

As regards the issue of negligence of the appellant-Board, I find the stand taken by the Board, to be not only wholly irrational but completely insensitive, other than being completely against the law settled by their Lordships in the aforesaid judgment in the M.P. Electricity Boards' case (supra).

The issue of tortious liability regardless of negligence apart, in the present case I fail to see how the appellant can consider itself to be not negligent in causing the accident.

Undoubtedly, whether electricity is being transmitted through high tension or low tension wires, the fact is that such wires having been installed in the open (and not underground due to the expenses involved), they obviously present a constant hazard, even though equally obviously, they are a necessary hazard in today's world, where being without electricity is almost inconceivable.

16. Given the fact that electricity transmission is a necessary risk, a duty is cast upon the person/the organization transmitting the electricity, for whatever noble purpose, to ensure that every possible precaution is taken that any fault in the transmission line, for whatever reason, does not endanger the general public.

It is not at all uncommon to see that electricity wires, especially in rural areas, are not kept taut as they should be, and are allowed to hang/sag loosely, thereby not only increasing the chances of the wires hitting each other and short-circuiting, thereby possibly

leading to them breaking from their poles, but otherwise also endangering persons driving high vehicles.

Even if the above observation of this Court is taken to be wholly a conjecture in the context of the present case, there is no running away from the fact that a storm in the area is something which the Board is bound to take notice of, not only upon a complaint being lodged, but by keeping a look out on weather reports, or sending out its linemen etc. on regular patrol beats, to ensure that in case a storm is in the offing, the lines and poles are well and properly tightened and kept in a good condition so as to ensure that they are not damaged or broken during such storm. This is in addition to the fact that a general look out for a storm in any area, would be a part of the duty of the electricity company/Corporation (Board in the present case), so that, if necessary, the electricity transmission can be switched off, to avoid any mishap.

17. The judgment of the Supreme Court, as cited by the learned first appellate Court, may be quoted from in this judgment also, to emphasize the above observations and to further reiterate, that even if there is no negligence, the electricity supplier cannot back out of its tortious liability in any case:-

“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 caused 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 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.

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 i.e. 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.”

(Emphasis applied by this Court)

18. Thus, firstly finding the argument of the learned counsel for the appellant that there was no negligence on the part of the Board, to be a wholly unsustainable argument in the face of the fact that the Board was obviously negligent in not ensuring that either the electricity line was properly maintained or if so maintained, then ensuring that the electricity connection was turned off if the apprehension of a storm was so high that it would result in broken lines.

No doubt, the stand of the appellant-Board that the deceased also could have been more careful may otherwise not have been without merit, but for the fact that the primary liability and onus to maintain safety at all costs, on its transmission lines, is on the appellant, and it not having discharged that responsibility, thereby resulting in live electric wires breaking down in a storm, with not even a basic precaution taken, of the electricity connection being turned off, or having a system in place that ensures that there are 'breakers' that cut off the supply the moment the wire breaks, then, other than tortious

liability not necessarily being attributable to willful negligence, in the present case, the appellant-Board was actually wholly negligent.

19. Further, in the light of the aforesaid judgment of the Supreme Court in the M.P. Electricity Boars' case, this Court finds that the Board in any case otherwise also, de hors any negligence, would be liable in tort to compensate the respondents-plaintiffs for the loss of their son, he admittedly having died of electrocution from live electricity wires, lying broken on the public path.

20. Coming to the issue of the compensation allegedly being excessive, though, undoubtedly, the minimum wage of an unskilled labourer in the State of Punjab as in June 2006, was Rs.2440/- per month or approximately Rs.2500/-, it is seen that the learned Courts below though may have assessed the income of the deceased to be excessive by almost double the amount of such minimum wages, however, the amount awarded for pain and agony to the parents of a 22 year old boy, for the loss of their child, to the tune of Rs.5,000/- is wholly and completely inadequate.

Thus, even though the compensation for the loss of dependent income (though otherwise payable to only appellant No.1), is possibly excessive, there being no specific proof of the deceased having earned more than the minimum wage, however, even if the loss of dependent income to the deceased, payable to appellant No.1, is halved from Rs.5,40,000/- to Rs.2,70,000/-, what is awardable to both the appellants, for the loss of love and affection of their son for all

times in the future and for the pain and suffering that they went through in seeing him dead, would obviously be not less than Rs.3 lacs, which would cover the difference between the actual loss of the dependent income and the compensation actually payable under the aforesaid heads.

This is other than higher funeral expenses than Rs.5,000/- (as awarded by the learned Courts below), being payable to appellant No.2.

21. In fact, in this situation, not less than Rs.10 lacs, by way of compensation for the loss of their young son, due to callousness on the part of a statutory authority, is to be awarded. However, this not being an appeal by the plaintiffs seeking enhancement of compensation, nothing further is said on that aspect, by this Court.

22. Of the substantial questions of law framed by the learned counsel for the appellant, the only one which could be termed as such is the one which questions as to whether the appellant can be fastened with the burden to pay compensation for an “act of God”.

Other than that, the question of law which would arise, but is not wholly germane to the present controversy, this Court having held that the appellant-Board was actually negligent due to which deceased Nikka Singh lost his life, is whether tortious liability can be fastened on a service provider, even in the absence of negligence.

Both the questions are answered in affirmative, the first being that it was not an “act of God” in the manner that is implied by

the appellant, but the negligence of the appellant that caused the death of Nikka Singh, as held above.

In fact, this is a question of fact rather than of law and hence the question of law, in the present context, has been wrongly framed by the appellant.

As regards the question of tortious liability, in the light of the judgment of the hon'ble Supreme Court in M.P. Electricity Board vs. Shail Kumars' case (supra), a service provider dealing in hazardous services is tortiously liable, regardless of negligence, in compensating a victim of any accident resulting from the service provided.

23. However, in the present case, to repeat, it was actually negligence on the part of the appellant-Board that caused the death of son of the respondents herein and as such, compensation is payable to them simply because of that.

24. In view of what has been held above, finding absolutely no merit in the appeal, it is dismissed with costs of Rs.25,000/-, to be paid by the appellant-Board to the Punjab State Legal Services Authority.

It will be open to the Board to recover the compensation awarded, as also the aforesaid costs, from the person/s responsible for non-maintenance of electricity lines in the manner that they should be so maintained.

12.05.2016

(Amol Rattan Singh)
Judge