

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

R.S.A No. 1741 of 2015 (O&M)

Date of decision :19.01.2016

Ram Dia and others

..... Appellants

Versus

Uttar Haryana Bijli Vitran Nigam Ltd., and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Munish Mittal, Advocate
for the appellants.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

CM No. 4745-C of 2015

There is delay of 50 days in filing of the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 50 days in filing the appeal is hereby condoned.

R.S.A No. 1741 of 2015

The present appeal has been preferred against the judgment and decree dated 23.08.2014 passed by the learned Additional District Judge, Karnal, vide which the appeal filed by the appellants-plaintiffs against the judgment and decree dated 25.01.2012, passed by the learned Civil Judge (Jr. Division), Karnal has been dismissed.

2. The appellants-plaintiffs has filed a suit for recovery of un-

liquidated damages along with interest at the rate of 18 % per annum, till realization of the decretal amount on the grounds *inter alia* that there is a Power House of 33 KV in village Rahra. The transformer which was installed in the field of one Rampal son of Surjit, resident of village Rahra, District Karnal was burnt. Said Rampal wanted to get the said transformer removed from his fields by requesting the defendants. On 13.12.2007, at about 10.00 A.M, said Rampal and deceased Chander Bhan went to the Power House, Rahra. Rampal requested Suraj Bhan-Lineman to remove the aforesaid transformer. Kala son of Sanmukh was also present in the Power House at that time. Suraj Bhan-Lineman made an entry in the Register for his departure to the spot for the removal of the transformer. The jumper of the transformer of Chander Bhan-deceased was also not working. Suraj Bhan-Lineman informed that he will get the same repaired by switching off the electric supply of village Rahra. The transformer was removed from the fields of Rampal. Thereafter, Suraj Bhan-Lineman along with deceased-Chander Bhan reached at the fields of Kala and tried to repair the transformer. Suraj Bhan-Lineman requested Chander Bhan to given him the spanner. When Chander Bhan tried to given him the spanner, then both Chander Bhan and Suraj Bhan-Lineman were electrocuted. Due to electrocution Chander Bhan fell down and sustained injuries. Suraj Bhan also received some injuries. Chander Bhan was taken to CHC, Assandh. But, he succumbed to the injuries on the way. It is pleaded that the aforesaid incident has taken place due to negligence of defendant no. 3. A criminal case was also registered against respondent no.3. Plaintiffs no. 1 and 2 are the parents. Plaintiff no. 3 is

the widow and plaintiffs no. 4 to 6 are the children of deceased-Chander Bhan. He was having the land measuring 19 Kanals and was also doing the dairy farming and earning Rs. 20,000/- per month. The plaintiffs have lost their source of livelihood. Defendant no. 3 was working under the control and supervision of defendants no. 1 and 2. Hence the suit.

3. The defendants/respondents contested the suit *inter alia* on the ground that a false criminal case has been got registered against respondent no. 3-Subhash by Kala, who is a close relative of the deceased. No complaint was moved by the deceased to the defendants with respect to any defect in his transformer. Infact, he was in the process of doing the theft of electricity energy when the occurrence took place. So, no fault can be attributed to the defendants. The plaintiffs have cooked up a false and baseless story just to extort money from the defendants. Suraj Bhan-Lineman has not received any injury in the occurrence. With these pleas, defendants pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 29.01.2010:-

1. Whether the plaintiffs are entitled for a decree for recovery of un-liquidated damages along with interest @ 18 @ p.a. as prayed for?OPP
2. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties?OPD
3. Whether the present suit is not maintainable in its present form? OPD
4. Whether the plaintiffs have no locus-standi and cause of action to file the present suit?OPD
5. Whether the civil Courts has got no jurisdiction to try and entertain the present?OPD

6. Relief.

5. On appreciating the evidence and material brought on record, the learned trial Court dismissed the suit vide impugned judgment and decree dated 25.01.2012. Aggrieved with the aforesaid judgment and decree, they preferred the appeal. The same was also dismissed by the learned Additional District Judge, Karnal, vide impugned judgment and decree dated 23.08.2014. Hence this Regular Second Appeal.

6. I have heard Mr. Munish Mittal, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

7. Initiating the arguments, learned counsel for the appellant contended that this fact is not disputed that Chander Bhan has died due to burn injuries received due to electrocution. The occurrence is not even disputed by the defendants in the written statement. He further contended that Suraj Bhan-Lineman has also received injuries in this occurrence. He was also got admitted in the hospital and was medico legally examined. He contended that if the occurrence would not had taken place, then for what purpose Suraj Bhan was admitted in the hospital and how he suffered the injuries. He contended that the occurrence has taken place due to negligence of respondent no. 3 as he has not switched off the electric supply. He further contended that deceased-Chander Bhan was the only bread winner of the family of the plaintiffs. He was an agriculturist and was also running the milk dairy. He was earning Rs. 20,000/- per month. Thus, he contended that the suit filed by the appellants have been wrongly dismissed by the learned Courts below.

8. I have duly considered the aforesaid contentions.

9. This Regular Second Appeal has been preferred against the concurrent findings of facts recorded by both the learned Courts below. The law is well settled that the scope of interference with the concurrent findings of fact while exercising the powers under Section 100 of the Code of Civil Procedure, 1908 is very limited. It is only permissible where the Courts below misdirected themselves in appreciating the question of law, the onus was placed on the wrong party, the material or relevant evidence was not considered, which if, considered would have led to an opposite conclusion and that the findings have been arrived at by the learned Courts below by placing reliance on inadmissible evidence, which, if, omitted would have led to the opposite conclusion and finally that the judgments passed by the Courts below are perverse. It is also the settled principle of law that in Regular Second Appeal, the High Court cannot indulge in the task of re-appreciating the evidence. In view of the aforesaid principles of law, we have to examine the case in hand.

10. The plaintiffs-appellants have filed a suit for claiming unliquidated damages on the grounds that due to negligence of respondent-defendant no. 3, deceased-Chander Bhan was electrocuted and died due to burn injuries. Thus fact is not disputed that Chander Bhan suffered the electric shock and electric burn to the vital parts of the body, which was the cause of his death. Even, a criminal case was registered against defendant no. 3 on the statement of Kala son of Sanmukh on the allegations that defendant no. 3 had released the electric supply in a negligent manner. Defendant no. 3 was the Sub-Station Supervision

Attendant of the Power House, village Rahra. Thus, in order to succeed, the plaintiffs were required to establish that due to negligence of defendant no.3, deceased-Chander Bhan was electrocuted on 13.12.2007. It is also the case of the plaintiffs that Suraj Bhan-Lineman has also received burn injuries in this occurrence and was admitted in CHC, Assandh for treatment. But, the defendants have denied that Suraj Bhan-Lineman has suffered any burn injuries. It is the basic story set up by the plaintiffs that Suraj Bhan-Lineman was repairing the jumper of the transformer of the deceased and he asked Chander Bhan to handover the spanner and in that process Chander Bhan and Suraj Bhan-Lineman were electrocuted. If, this version of the plaintiffs is believed, both Chander Bhan and Suraj Bhan-Lineman would have suffered the burn injuries due to electric shock. But, the plaintiffs have not adduced any evidence to show that Suraj Bhan-Lineman had also suffered the burn injuries. This fact is not disputed that Suraj Bhan-Lineman was admitted in the hospital and was also medico legally examined. The Medico Legal Report of Suraj Bhan-Lineman has not been produced in their evidence by the plaintiffs, which was the vital piece of evidence in support of their version. However, the defendants in their evidence have produced the copy of the Medico Legal Report of Suraj Bhan-Lineman, which is marked document as mark 'X'. Learned trial Court has observed that as per the said Medico Legal Report, Suraj Bhan-Lineman has complained of pain in his chest, legs and head. Meaning thereby, he had not suffered any burn injury. It is not disputed that as per the plea of the plaintiffs, Suraj Bhan-Lineman was much nearer to the transformer than deceased Chander Bhan. If, the

occurrence would had taken place in the manner alleged by the plaintiffs, then Suraj Bhan-Lineman, who was repairing the transformer would have been worst affected person as he was nearer to transformer then deceased Chander Bhan.

11. The plaintiff have also alleged that the jumper of the transformer of deceased Chander Bhan was defective and the same was to be repaired and only for that purpose Suraj Bhan-Lineman came to the spot. But, the plaintiffs have not produced any evidence to show that any electric connection was existing in the name of deceased Chander Bhan or any of the plaintiffs. So, it is also not proved that any complaint was made by the deceased to the department for the repair of the jumper of the transformer on 13.12.2007. Even, in the complaint register mark 'E', this fact is recorded that Suraj Bhan-Lineman had gone to repair the transformer of Rampal. There was no mentioning of any complaint made by deceased Chander Bhan for the repair of the jumper of his transformer.

12. As observed by the learned trial Court, PW-9 Dr. Amrit Pal Kaur, Medical Officer, G.H, Karnal, who was the member of the Medical Board, which carried out the postmortem examination on the dead body of Chander Bhan stated that deceased Chander Bhan had not received any burn injuries on his hands. If, Chander Bhan would have electrocuted while handing over the spanner to Suraj Bhan-Lineman, who was allegedly repairing the jumper of the transformer, he must have suffered the electric burns on his hands. So, the statement of PW-9 Dr. Amrit Pal Kaur further negates the version of the plaintiffs.

13. Learned Courts below while discussing the statements of

DW-1 A.D.Bhatia, Junior Engineer, Ist, UHBVNL, Assandh and DW-4 Parul Kumar, Junior Engineer (Field), Office of SDO(OP), UHBVNL, Assandh had come to the conclusion that no permit was issued on 13.12.2007 for putting off the electric supply to the repair the defect in the transformer in question. This fact further contradicts the case of the plaintiffs that the jumper of the transformer of the deceased-Chander Bhan was being repaired when the occurrence took place. If, that would have been so, the necessary permit would have been issued by the authorities for stoppage of the electric supply in order to carry out the repair. Thus, it is not proved that any complaint was lodged by deceased-Chander Bhan for the repair of the jumper of his transformer on 13.12.2007, so there is no basis to show any negligent act on the part of respondent no. 3 for releasing the electric supply. Thus, keeping in view of my aforesaid discussion, I do not find any perversity in the concurrent findings arrived at by the learned Courts below.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed in *limine* with no orders as to costs.

January 19, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**