

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on: 16/05/2017****Judgement Delivered on: 03 /07/2017****FA No. 148 of 2012**

- Gyanati Devi Wd/o Jaiprakash Singh, Aged about 30 Years, R/o Jute Mill Raigarh, Distt. Raigarh (C.G.)

---- Appellant**Versus**

1. Chairman, M.P. Electricity Board (Now C.G Electricity Board, Raipur) Distt. Raipur (C.G.)
2. Director, Defence and Vigilance, M.P. Electricity Board, (Now C.G. Electricity Board Raipur), District Raipur (C.G.)
3. Executive Director, Bilaspur Zone, M.P. Electricity Board, (Now C.G. Electricity Board, Bilaspur) Distt. Bilaspur (C.G.)
4. Executive Engineer, O & M, M.P. Electricity Board, (Now C.G. Electricity Board, Raigarh) District Raigarh (C.G.)

---- Respondents

For Appellant	:-	Shri Manoj Paranjpe, Advocate.
For Respondents	:-	Shri Manish Nigam, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****(CAV) Judgement by Shri R.C.S. Samant J.**

1. This appeal has been preferred against the judgement and decree dated 12-12-2003 passed by First Additional District Judge, Raigarh, District Raigarh (C.G.) in Civil Suit No.1-B/2001 whereby the appellant's claim for compensation from the respondents was rejected.

2. The appellant/plaintiff filed a plaint before the trial Court with a pleading that her husband Jaiprakash Singh was ill-treated and beaten by Ramnaresh Singh, an employee of the respondents on 01-09-1994. A report was lodged against Ramnaresh Singh on the same day in Police Station, Raigarh. On the

basis of this incident, President, Karmachari Sangh made a representation to the department for transfer of Ramnaresh Singh. Ramnaresh Singh had a history of misconduct, offensive behaviour and ill-treatment with colleagues and officers of the department and of being a bully, but no effective measures were taken by the respondents to control the activities of Ramnaresh Singh. On 01-11-1994, at about 8-30 a.m. Ramnaresh Singh assaulted Jaiprakash Singh with an iron rod causing him injury which resulted in his death. Offence was registered against Ramnaresh Singh and he was prosecuted for offence under Section 302 of IPC. It was alleged that death of Jaiprakash Singh occurred because of the negligence of the respondents in not keeping under control their employee Ramnaresh Singh who has caused the death of the husband of the appellant. Hence, pleaded that the respondents are jointly and severally liable to pay compensation to the appellant/plaintiff. Claiming under the heads of loss of income etc., it was prayed that the compensation of Rs.8,00,000/- be ordered to be paid by the respondents/defendants to the appellant/plaintiff.

3. Respondents/defendants in their written statement have denied all the averments in the plaint and stated that the incident of death of Jaiprakash Singh occurred due to personal enmity with Ramnaresh Singh for which the department is not liable to pay compensation in any manner. Denying the entitlement for compensation claimed by the plaintiff, it is stated that plaint has been brought with malafide intention to harass the respondents. Further, it was pleaded that Ramnaresh Singh is not made a party in this case, hence, the suit is not maintainable on the ground of non-joinder of necessary party. Prayer was made for dismissal of suit.

4. The trial Court has framed issues. After affording opportunity to both the parties for adducing evidence and hearing the arguments, has passed the

impugned judgement in which the suit of appellant/plaintiff has been dismissed and decree was drawn accordingly.

5. The grounds in this appeal are that the impugned judgement and decree is illegal, erroneous and contrary to the law in force. It was the burden of the respondents to prove that there was no negligence on their part. Trial Court should have appreciated that the State is liable for tortious act committed by its agency and by any of its employee. It was very clear on record that because of negligence, carelessness on the part of the respondents, the incident took place. Prayer has been made to set aside the impugned judgement and for award of compensation to the appellant/plaintiff.

6. We have heard learned counsel for the parties and perused the record of the lower Court including the impugned judgement.

7. The question for determination in this appeal is whether the respondents are liable to pay compensation to the appellant in this case?

8. It is not disputed that Ramnaresh Singh assaulted Jaiprakash Singh on 01-11-1994 which resulted in death of Jaiprakash Singh, which was reported to Police and Ramnaresh Singh was prosecuted for the charge of murder. It is also not disputed that Ramnaresh Singh was an employee under the respondents in the capacity of Security Officer. Without disputing the allegations made in the plaint that Ramnaresh Singh was a man of dubious character having history of being a bully and being violent with employees and officers of the department and that measures taken if any, by the respondents could not put a control on his activities, thus, boosted his confidence to continue with such activity, even then, the question would arise as to whether the offence of murder committed by Ramnaresh Singh was in the garb of duty being performed by the orders or instructions of the respondents.

9. Sitaram Sharma (PW-1) has stated that harassed by the activities of Ramnaresh Singh, a memorandum was presented to the department for his transfer to a place outside Raigarh. Two months after the submission of this memorandum Jaiprakash was murdered. Atulshankar Rao Kher (PW-2) has stated similarly.

10. Plaintiff Gyanati Devi (PW-3) has stated that a complaint regarding misconduct of Ramnaresh Singh was made to the respondents/officers and no action was taken against him. On 01-09-1994 at about 7-00 a.m. Ramnaresh Singh forcibly entered her house abused and gave beating to the inmates of the house. Complaint was made to the officers of the Electricity Board and to the Union of Electricity Department, even then, Ramnaresh Singh was not transferred. Two months later, deceased Jaiprakash was going to market when he was assaulted by Ramnaresh Singh with an iron rod and was injured. Statement of Vijay Kumar Shrivastava (PW-4), Surendra Kumar Singh (PW-5) is similar and against the conduct of Ramnaresh Singh, while he was continuing in employment under the respondents and it is alleged that even after various complaints made to the department, Ramnaresh Singh was not transferred from the place where he was posted.

11. Documents have also been produced and exhibited by the plaintiff. Ex. P-1 is the complaint to Executive Director, M.P.E.B., Bilaspur in which the conduct and behaviour of Ramnaresh Singh was complained of and a request for his transfer was made. Similar complaint (Ex. P-2) was a letter given to the department. Ex. P-3 is the copy of charge against Ramnaresh Singh in a criminal case, Ex. P-4, Ex. P-5 and Ex. P-6 are the certified copies of the documents from criminal record. Ex. P-7 is another complaint/memorandum given to the department by one employee of the department.

12. Considering all the evidence and material available on record, it is clearly made out that the act of Ramnaresh Singh in assaulting and causing death of Jaiprakash Singh was not connected with the duties. It was an individual act of Ramnaresh Singh for which he is individually responsible. Hence, he was prosecuted for the offence of murder. This suit for claiming compensation has been brought under the principle of vicarious liability. This is an exception to the general rule of tortious liability. Under this principle employer is held liable for the tortious act committed by his servant. The requirement for establishing a case of vicarious liability are these that firstly during the commission of an act, the relationship of Master and Servant must exist, secondly, the wrongful act must be of such nature so as to connect the master with the act done by the servant and thirdly, the wrongful act must have been done during the course of employment.

13. There is evidence to show in this case that Ramnaresh Singh was an employee of respondents, hence, the respondents were masters and Ramnaresh Singh was their servant, but there is no evidence to show that the act of murder committed by Ramnaresh Singh had any relation with the respondents by way of performing any duty in carrying out any instructions of the masters i.e. respondents. Further, there is no evidence at all to show that the offence of murder of Jaiprakash Singh was committed by Ramnaresh Singh while he was performing his duty. Hence, the essentials which bind a master vicariously for the act done by his servant are totally absent in this case. The suit filed by the appellant/plaintiff is totally misconceived. The actual responsible person for causing death of Jaiprakash was Ramnaresh Singh alone who has not been made a party in this case. It was from him that compensation could have been claimed by the plaintiff for the wrongful act done by him who has caused damage and injury to the plaintiff. Under these

circumstances, the suit of plaintiff could not have been admitted by the trial Court. The act of Ramnaresh Singh in committing murder of Jaiprakash Singh by an individual act, is not proved to be related with the respondents in any manner. Negligence of respondents/parties cannot be made a ground to connect them because this is totally imaginary and remote cause. The connection to be shown should be direct and un-rebuttable, which has not been shown in the plaintiff evidence.

14. On the basis of findings above and the discussion made aforesaid, it is found that there is no reason to interfere with the impugned judgement. The impugned judgement does not suffer from any infirmity. Hence, this appeal is dismissed. No order as to costs.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.C.S. Samant)
Judge