

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD

SECOND APPEAL NO. 124 OF 2015

Maharashtra State Electricity  
Distribution Company Limited,  
through Asstt. Engineer (O & M),  
M.S.E.D.C.L. Dawarwadi, Tq. Paithan, .. Appellant/  
Dist. Aurangabad Ori.Deft. no. 1

versus

1. Kishor Sahebrao Aute,  
Age 36 years, occup. Agril.,  
R/o Dawarwadi, Tq. Paithan,  
Dist. Aurangabad.
2. Bappasaheb Manikrao Agale,  
Age 39 years, occup. Service,  
R/o Dawarwadi Sub Division,  
Dawarwadi, Tq. Paithan,  
Dist. Aurangabad .. Respondents/  
Resp. no. 1 is  
orig. plaintiff  
Resp. No.2 is  
orig.deft. no.2

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Mr. Anil M. Gaikwad, Advocate for appellant  
Mr. R. L. Chabda, Advocate i/b Legal United (Law Firm) for  
respondent no.1

CORAM : SUNIL P. DESHMUKH, J.  
DATE : 24th April, 2017

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. The appellant – original defendant no. 1 takes exception  
to decision in regular civil appeal no. 424 of 2012 dated

25-09-2014 whereunder principal district judge, Aurangabad has partly allowed said appeal preferred by present appellant, modifying the judgment and decree dated 30-04-2011 passed by the joint civil judge, senior division, Aurangabad in special civil suit no. 199 of 2009, bringing down the amount of ₹ 10,00,000/- granted by the trial court to respondent no.1-original plaintiff towards damages to ₹ 7,71,803/- along with interest at the rate of 12 per cent per annum from the date of filing of the suit till realization.

3. Plaintiff-respondent no. 1 suffered electric shock while on electric pole and had a fall while the wire suddenly got live. From the accident, he suffered walking disability of 41 per cent and sight disability of about 30 per cent. He also had to incur expenses over medical treatment and required medical treatment through his life. Plaintiff had also suffered pains and agony. Plaintiff sued for damages of Rs.10,00,000/- which came to be granted by trial court and in appeal therefrom by defendant no.1, the decree of the trial court as aforesaid came to be modified. Defendant no. 1, aggrieved by said modification, is before this court.

4. Learned counsel Mr. Gaikwad appearing on behalf of the appellant submits that the two courts hitherto have been in error in holding the plaintiff to be entitled to damages, for, no credible material is produced on record by plaintiff to show that the accident occurred due to negligence of the defendants. He purports to refer to that, place of pole and occurrence of the incident are quite apart. Plaintiff has suffered accident while doing some other work and not due to negligence of defendants.

5. He further contends that the appellant is not responsible for the accident and in case the appellant is found to be responsible, yet the damages awarded are far more than the plaintiff would be entitled to. For said purpose, learned counsel refers to that the appellate judge appears to have considered that the plaintiff suffered in aggregate 71% disability adding 41% walking disability and 30% of sight disability, such a computation is not proper and not acceptable. He further submits that the amount granted to plaintiff at the rate of ₹ 2,000/- per month during life for medical treatment of the plaintiff is also improper, for, save and except the certificate issued by Dr. Bhavana Takalkar from Apex hospital, there is no other documentary evidence

produced on record in that respect and it cannot be said that major medical expenses are required to be incurred in future. He, in the circumstances, urges to indulge into his request to set aside and/or to further reduce the amount of compensation granted by the two courts.

6. Resisting aforesaid submissions, Mr. Chhabda, learned counsel for respondent no. 1 – original plaintiff contends that about occurrence of incident and place of the incident the two courts are unanimous and have found the averments and pleadings of the plaintiff to have been proved with reference to the record. He submits, it is a question of fact and has been decided concurrently by two courts and thus is not amenable for reconsideration nor can it be said that the findings recorded are perverse.

7. He submits that the contention of the appellant about learned judge having observed the plaintiff to have suffered 71% disability does not hold water, for, learned judge has not at all granted damages computing disability of 71%. As a matter of fact, disability has been considered only 30% by the learned judge. In the circumstances, the submission of the appellant about appellate judge having observed 71%

disability has no basis nor has the same influenced decision of the appellate court. He submits that rest of the relevant factors viz; land holding of plaintiff, it being cultivated by him and cultivation of land being affected by his disability and reduction in income have been properly considered and having regard to the same very reasonable compensation has been awarded by the trial court. The appellate court has further reduced compensation from ₹ 10,00,000/- to ₹ 7,71,803/-. He submits, considerations which went into making of modification in trial court's order by appellate court although are not palatable to plaintiff, yet looking at the time gap between the date of incident and that we are in the year 2017, plaintiff is in grave urgency to receive amount and as such is not raising any dispute about error by appellate court in reducing damages.

8. The appellate court has in paragraphs 15, 17 and 19 observed :

*" 15. I have carefully gone through the cross-examination of plaintiff and witness Sanjay. I do not find any discrepancy and inconsistency in their evidence. Moreover, it has brought in cross-examination that the plaintiff Kishor and his friend Sanjay that they were with each other on 17.09.2006 at the relevant time of an incident. Plaintiff has produced one document vide Exh. 23. After obtaining*

*permission to lead secondary evidence, plaintiff proved the said document at Exh. 23. It is a copy of register called as " Daily Load Record of 33 KV Sub Station, Dawarwadi ". In the said register, it is mentioned as under :-*

*“११ KV दावरवाडीचे फिडरचे परमिट दिले श्री आगळे यांना टाईम  
११.०० ते १३.०० LP Cancel”*

*It is quite evident from the above mentioned documentary evidence vide Exh. 23 that defendant No. 2 had obtained permit of switching off the electricity supply in between 11.00 a. m. to 1.00 p. m. from Dawarwadi Power House at the relevant time of an incident. Plaintiff and his friend Sanjay accompanied defendant No. 2 to Dawarwadi Sub Station and defendant No. 2 obtained permit to switch of electricity supply between 11.00 a.m. to 1.00 p. m.*

*17. It has come in evidence of plaintiff and his friend Sanjay and defendant no. 2 that the electric pole where the incident took place is situated near river Virbhadrha which is far away from the field of the plaintiff. So, the incident did not take place at electric pole which is situated in the field of the plaintiff and near the field of the plaintiff. In fact, incident took place at the electric pole which is situated near river Virbhadrha, which is quite away from the agricultural field of the plaintiff. In ordinary course of nature, it is quite possible in rural area that when there is no electric supply for 7 to 8 days, the aggrieved agriculturist would approach to the concerned lineman of the said area and will try his best to find out the fault and to repair the same so as to start electric supply of the electric pump. It can not be ignored that the agriculturist can not supply water to the crops on account of non-supply of electricity as the electric pump will not run in absence of electricity. Thus, it is quite natural, possible and probable that the plaintiff would have climbed on the electricity pole as per the*

*say of defendant no. 2 and thereafter defendant No. 2 went away to bring the wires and told the plaintiff to remain on electricity pole and suddenly at 12.00 noon, electric supply was resumed through the wire of electricity pole and plaintiff got electrocuted and met with an accident. Defendant No. 2 and defendant No. 2 have admitted in their evidence that no helper is provided to defendant No. 2 by electricity Company. So, the possibility of taking help of the plaintiff by defendant no. 2 by asking plaintiff to climb the pole and sit there is quite possible and probable.*

**19.** *Now, defendant No. 2 has stated in his cross-examination that at about 12.15 hours on the day of incident electricity supply was resumed by operator Shejul, who was attached to Electricity Power House of Dawarwadi village. So, considering the fact that two permits were issued for switching off electric supply between 11.00 a.m. to 1.00 p.m. and thereafter first permit was only between 11. 00 a.m. to 12.25 p.m. and issued to one Shri Kale, it is quite possible and probable that after getting information from Kale about completion of the said work, electric supply would have been resumed and that would have been definitely through the wire of electric pole on which the plaintiff was climbed and got electrocuted. If we consider the entire evidence of defendants, it is not sufficient by way of rebuttal evidence to disbelieve the case made out by the plaintiff and his friend Sanjay Tangde that due to negligence of defendants, plaintiff met with an accident as he got electrocuted while he was on the electric pole as per the say of defendant no. 2 in order to help him for repairing the fault. Thus, it can be easily said from the above discussed evidence on record that the plaintiff got electrocuted as electric supply was resumed all of sudden due to negligence of defendant no. 2. Moreover, defendant No. 2 is lineman of defendant no. 1 Electricity Company. Defendant No. 1 Company is also liable for the act of defendant no. 2. Thus, the entire*

*negligence lies with defendant no. 1 and defendant No. 2 as far as the incident in which plaintiff got electrocuted on electric pole is concerned. In the case-laws reported in AIR 2002 SC 551, M.P. Electricity Board Vs. Shail Kumar and 2004 (2) ALL MR 721, Smt. Vandana Narayanrao Chitnavis vs. State of Maharashtra, the Hon'ble Apex Court and the Hon'ble Bombay High Court respectively laid down that, " strict liability rule is applicable to an incident in which electrocution takes place due to live wire of Electricity Board and such liability is absolute without intention and negligence. " Thus, as per the ratios laid down in the above-mentioned case-laws, there is strict liability of defendant Nos. 1 and 2 as they are negligent. So, I answer point no. 1 in affirmative. "*

9. On perusal of the judgments of the two courts hitherto, it appears that the relevant factors like place of incident, defendants' negligence as appearing from the record, extent of landholding of plaintiff, its' cultivation getting affected because of accident of the plaintiff and reduction in income have been properly taken into account. The courts have considered the evidence as has been adduced and produced on record about disabilities being suffered by the plaintiff. In the circumstances, there does not appear to be any error at either of the two stages in appreciation of the evidence on record. The courts have concurrently considered that the plaintiff has suffered disabilities and there has been negligence on the part of the defendants, all other relevant

factors for granting damages appear to have been taken into account.

10. After having taken into account aforesaid, submissions on behalf of appellant do not appear to carry weight enough to give rise to any question which can be said to be of substantial nature, for consideration of second appeal. The Second appeal, as such, stands dismissed.

SUNIL P. DESHMUKH,  
JUDGE

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