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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.352 OF 2016

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| 1. Maharashtra State Electricity Board, now
Maharashtra State Electricity
Dist. Co. Ltd.,
Through its Executive Engineer,
Vidyut Bhavan, Hingoli Naka,
Nanded | APPELLANTS |
| 2. The Junior Engineer,
MSEB Office, Now MSEDCL Office
Shivaji Nagar, Nanded | |

VERSUS

- | | |
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| 1. Sanjay s/o Khandu Monde
Age - 45 years, Occ - Labour
R/o Near Bhim Sandesh Colony,
Shrivasti Nagar, Nanded | RESPONDENTS |
| 2. Babita w/o Sanjay Monde
Age - 40 years, Occ - Household
R/o As above | |

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Mr. Dhananjay P. Deshpande, Advocate for the appellants
Mrs. Pratibha Bharad, Advocate for respondents

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th JANUARY, 2017

ORAL JUDGMENT :

1. Heard learned advocates for the parties.
2. The second appeal has been preferred by defendants, the

then MSEB and its authority, purporting to take exception to concurrent decisions rendered by trial and the appellate courts holding the appellants liable for payment of compensation due to death of plaintiffs' son by electrocution.

3. It is case of plaintiffs that around September, 2004, while their son Nitin had been playing with friends in an agriculture field had sustained serious injuries due to electric shock caused by a tension wire passing over an electric pole. During treatment in hospital, he died on the very same day. The incident had been reported to police at Nanded, who registered accidental death under section 174 of the Criminal Procedure Code. Spot Panchanama had been conducted and postmortem of the deceased had also been done. The plaintiffs alleged negligence to the defendants for the loss of life of their son and claimed compensation.

4. The appellants - defendants purported to repel case of the plaintiffs by an absolute denial in their defence. It was denied that son of the plaintiffs died due to electrocution. It was denied that there was any leakage in tension wire. It was alleged that a few of the hutment dwellers near the electric pole had taken illegal electric supply and due to the same, son of the plaintiffs

died. Electrical Inspector, who had visited the spot, has not reported anything adverse against the defendants. The defendants contended that it may be an act of God.

5. The trial court framed issues as to whether son of the plaintiffs died due to negligence on the part of the defendants; whether the defendants are liable to pay damages and whether the plaintiffs would be entitled to interest. On appreciation of evidence and discussing the same, the trial court held that son of the plaintiffs died due to negligence of the defendants and that defendants were liable to pay damages to the tune of Rs.5,00,000/- along with 12% interest and in default 16 % interest.

6. The appellants - defendants went up against aforesaid judgment and decree in regular civil appeal No.154 of 2012 before District Judge at Nanded. District Judge-1 had framed points for consideration as to whether electric line had been properly maintained by the defendants; whether the accident was an act of God and as to whether the appellants are liable to pay damages granted by the trial court or the same deserve to be reduced.

7. The appellate court has considered inquest panchanama,

postmortem notes and concurred with the findings given by the trial court considering the postmortem notes given by medical expert of forensic technology of government medical college, tantamount to public document and non examination of doctor would not negate the case of the plaintiffs that their son died due to electrocution. It has further been observed by the appellate court that said document has also been relied upon by the defendants - appellants in their report and as such, they are estopped from denying the same.

8. Discussing evidence further, the appellate court observed that electric pole was installed in agriculture field of one Lala and open space of Shaikh Rauf, which area is fenced with iron wire and the tension wire was outside the fenced area. There had been rains before the incident, it being rainy season. Contention on behalf of the appellants had also been appreciated that tension wire had been passing over area near hutment close by and people there were having lights and television sets without authorized electric supply and there were unauthorized electricity connections. However, the court found it difficult to go by the allusion for the reason that spot Panchanama reveals that the incident had taken place in the field and not near the huts. It has been observed that it has been contended on behalf of the

appellants - defendants that they had taken proper care and caution in electricity supply and the concerned pole had no electricity leakage and the incident was alleged to have occurred due to illegal electricity connection. It has been observed that the Electrical Engineer had relied upon police panchanama, statements and postmortem notes. It has further been observed that he has specifically mentioned that no person has given statement regarding unauthorized electricity supply and further importantly that seized articles and statement do not refer to type of wiring used and as such, the engineer went on to give a tentative opinion. The appellate court also observed that it would not be said that the defendants could produce any document on record which would show that they had in fact visited the spot and prepared any panchanama. The appellate court has further considered that the report filed by Electrical Engineer is contrary to the spot Panchanama. There is no reference of any visit of any electrical engineer to the spot and he had simply relied on police papers and the reports sent by the defendants in the office. The report, as such, is unreliable being based on assumptions and presumptions. With reference to the relevant rules, it has been considered by the appellate court that various measures have to be provided for protection from overhead lines

by using various devices as approved by the Electrical Inspector. Since evidence by the defendants being silent in this respect and further as the death of son of plaintiffs is caused due to electrocution has not been denied, the appellate court concurred with the trial court's finding that electrocution had been caused due to negligence of the defendants. So far as quantum of compensation is concerned, the appellate court has considered calculations were made with reference to Minimum Wages Act and section 163 -A of the Motor Vehicles Act and considered that there is no reason to digress with the compensation arrived at by the trial court.

9. Mr. Deshpande, learned advocate appearing for the appellants - defendants contends that while there are reports on record particularly Exhibits-44, 45 and 48, which indicate that the electrocution would have taken place due to unauthorized electricity connection and further said documents concurrently show that there had been no leakage of electricity from the concerned electric pole, it is easily discernible that the death occurred not due to negligence of the defendants but due to unauthorized acts of the hutment dwellers having unauthorized electricity supply. He, therefore, submits that the second appeal raises a matter for consideration and as such, the same be

admitted. He further contends that the quantum of compensation granted has been arrived at hypothetically taking Minimum Wages Act or for that matter section 163-A of the Motor Vehicles Act, without any reference to any Rules, Regulations or law. He submits that a twelve year boy could hardly have a source of income for the plaintiffs and as such, the compensation, at the most can be possible for loss of love and affection and as such, quantum of compensation awarded by the courts has been exorbitant and far in excess of due.

10. Countering aforesaid submissions, Mrs. Bharad, learned advocate for the plaintiffs - respondents contends that liability to compensate cannot be escaped by the board and the same vividly emerges from a judgment of the Supreme Court in the case of "*M. P. Electricity Board V/s Shail Kumar and Ors*" reported in 2002 (1) ALL MR 963 (SC). She particularly refers to paragraph No.8 of the judgment reading thus -

"8. 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. ”

11. She, therefore, submits that liability to compensation cannot be dodged by the appellants. She contends, evidence on record more than sufficiently bears out that electrocution occurred due to negligence of the defendants.

12. She further contends that a possible scale has been taken into account that too at minimum level by resorting to the Minimum Wages Act and under the circumstances, compensation of Rs.5,00,000/- was demanded and after taking relevant factors into account the same has been granted. She submits that case law being relied upon on behalf of the defendants – appellants in case of “*Rajesh Kumar and Another V/s Punjab State Electricity Board and others*” reported in *Manu/Ph/2669/2012*, has referred to that for determining compensation there is no strait jacket formula on the basis of which it can be said that a particular amount would be the compensation. It is in the facts and circumstances of that case, the court had deemed that Rs.2,00,000/- would be a

proper compensation. She, therefore, submits that reliance being placed on said citation on behalf of the defendants – appellants would hardly govern present facts and circumstances of the case. She submits that there is no reason coming forth strong enough to meddle with the award of compensation by the two courts, save and except that it is exorbitant. Nor anything has been addressed to as to how and what scale should be applied while awarding compensation. Anything less than what has been granted would be an arbitrary measure of awarding compensation in the facts and circumstances of the present case, particularly having regard to the ages of the parents and enormous severity of shock of untimely death of their son. According to her, in the circumstances, even the amount of Rs.5,00,000/- is only a nominal and token compensation.

13. There is no evidence given which can be said to be credible material about there being any subsisting unauthorized electricity connections by the residents as alleged by the appellants – defendants save and except a presumptive approach as can be seen from Exhibits-44, 45 and 48. There is no concrete and substantial material being provided for on behalf of the appellants.

14. So far as compensation is concerned, while citation in *Rajesh Kumar's* case (*supra*) is relied upon for reduction of compensation, the citation itself says that there is no strait jacket formula and that there cannot be exact uniform rule for measuring value of human life, however, the court shall be on guard to see that the compensation should not be inadequate, unreasonable and deficient and at the same time, it should not be excessive or punitive and shall not result as a source of profit. Appellants have not been able to assert that measure of compensation is excessive or punitive or for that matter have not given any other method for determination. Having regard to the amount of compensation as has been granted, it appears that the amount of compensation as awarded by the courts hitherto does not appear to be excessive nor it is unreasonable.

15. Having regard to the observations as are appearing in the judgments of the two courts hitherto and as there is no particular evidence being given save and except reports, without reference to the measures which were taken on the spot, the decisions rendered by the court, considering negligence on the part of the appellants – defendants do not call for taking any different view at the second appellate stage. In the circumstances, it does not appear to be a case wherein decisions

hitherto deserve to be intercepted. In the circumstances, the second appeal fails and stands dismissed.

16. Having regard to the dismissal of the second appeal, amount deposited as directed by this court be allowed to be withdrawn by the plaintiffs – respondents. Civil application also stands disposed of.

[SUNIL P. DESHMUKH, J.]

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