

Judgment Reserved on : 18..4..2017

Judgment Pronounced on : 27.04.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISH KUMAR

Appeal Suit No. 1050 of 2012

and

M.P.No.1 of 2015

1. The Superintending Engineer
Tamil Nadu Electricity Board
Cuddalore.
 2. The Assistant Engineer
Tamil Nadu Electricity Board
Palur, Panruti Taluk,
Cuddalore District
- .. Appellants/ defendants

Versus

1. Thiru.T.Ranganathan
 2. Tmy. R.Kuppu
 3. Thiru.R.Ayyanar
 4. R.Valli
- .. Respondents/ plaintiffs

Appeal Suit filed under Section 96 of Civil Procedure Code against the Judgment and decree dated 25.01.2011 passed by the learned Additional District Judge, (Fast Track Court No.2) Cuddalore in O.S.No.61 of 2010.

For Appellants .. Mr.V.Viswanathan

For R1 to R4 .. Mr.R.Muralidharan

J U D G M E N T

Aggrieved over the decree and judgment of the learned trial Judge, decreeing the suit for a sum of Rs.4,43,095/- in favour of the plaintiffs 1 and 2 as compensation for the death of their son due to an electrocution, the present appeal came to be filed by the defendants.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The brief facts of the case of the plaintiffs are as follows:-

Plaintiff's 1 and 2 are the parents and 3 and 4 are the brothers of the deceased Pazhani @ Pazhanivel. On 08.06.2008, at about 6.00 p.m, while the deceased was working on the roof top of one Dhanapal's house at Muthu Narayanapuram, just above the said roof electrical lines meant for street lights and domestic usage were hanging in a very low level and when the same was contacted by Mr.Pazhani @ Pazhanivel incidentally, due to severe shock, his both hands caught by wire and charred and his major parts of the body were damaged. Immediately, he was taken to Government Hospital, Panruti and then transferred to Kannan Hospital, Cuddalore and Government Hospital, Pondicherry and on 25.8.2008 he succumbed to his electrocution injuries. Thereafter, the matter was reported to police and a case was registered in C.S.R.No.95 of 2008. According to the plaintiffs, the electrocution was due to negligence and improper maintenance of service lines of the defendants. Hence, they claimed compensation.

4. The brief facts of the case of the defendants are as follows:

According to the defendants, the electric overhead lines were laid and maintained as per the statutory specifications. Since the deceased built house underneath the overhead lines, the plaintiffs cannot claim compensation. The accident took place due to negligence act of the deceased. It is stated that police complaint was lodged belatedly and that no postmortem was conducted on the body of the deceased. Further, there is no intimation to the Electricity Board regarding the accident. It is also stated that monthly income of the deceased has not been supported by any documentary evidence. According to the defendants, the 3rd and 4th plaintiffs, who are brothers of the deceased, are major and hence, they are not entitled for any compensation. Non inclusion of the owner of the house, in whose house the deceased was said to have been working, in the suit is fatal to the case of the plaintiffs. Hence, the defendants prayed for dismissal of the suit.

5. On the basis of the above pleadings, the following issues were framed by the learned trial Judge:-

1. Whether the deceased Pazhani @ Pazhanivel was died due to electrocution on 08.06.2008 ?
2. Whether the accident occurred due to negligence on the part of the defendants?

3. Whether the defendants are liable to pay compensation and if so, to what extent?
4. To what relief, the plaintiffs are entitled to?

6. On the side of the plaintiff P.W.1 and P.W.2 were examined and Exhibits A1 to A9 were marked. On the side of the defendants D.W.1 was examined and Exhibits D1 and D2 were marked.

7. On the basis of the evidence and materials adduced on either side, the learned trial Judge found that since the electrocution was due to improper maintenance of low level electrical lines, which was passing through the house of one Dhanapal, the parents of the deceased are entitled to compensation of Rs.4,43,095/-. Accordingly, the trial Court decreed the suit in favour of the plaintiffs 1 and 2, who are none other than the parents of the deceased. Aggrieved over the same, the present appeal came to be filed.

8. The learned counsel for the appellants/defendants vehemently contended that immediately after the alleged electrocution, the plaintiffs failed to lodge a complaint to the police and the complaint was given only on the date of death of the deceased i.e. after two months and that, postmortem has also not been conducted on the body of the deceased. It is the further contention of the learned counsel that the accident register clearly shows that the accident was due to negligence on the part of the deceased. It is submitted that since the deceased was carrying iron rod, it accidentally touched the electrical line passing over the house and thereby the accident had occurred. Hence, it is the contention of the learned counsel for the appellants/defendants that the accident had occurred only due to the negligence on the part of the deceased. It is the further contention of the learned counsel that the house in which the deceased was working has been constructed below the electrical line and the same itself is against the law. Therefore, the liability cannot be fastened on the defendants, i.e. Electricity Department. Hence, the learned counsel prayed for setting aside the judgment and decree of the trial Court.

9. Whereas it is the contention of the learned counsel for the respondents/plaintiffs that the deceased had contacted with deteriorated live wire, which was passing through the roof top of the house of one Dhanapal, while he was working. It is submitted that the live wire has not been properly maintained by the defendants. It is further submitted that allowing the electrical wire to pass within the reach of people itself would amount to negligence on the part of the defendants. The learned

counsel also submitted that merely because FIR has not been filed immediately after the accident, that itself cannot be a ground to deny the accident itself.

10. The learned counsel also submitted that in the entire written statement as well as in the evidence of D.W.1, it is clearly admitted by the defendants that due to electrocution, the deceased sustained burn injuries and thereafter died in the hospital. The plaintiff being the innocent villagers cannot be expected to follow the legal formalities, particularly, when the deceased sustained serious burn injury in electrical shock. Hence, submitted that the judgment of the trial Court is well balanced and it does not require any interference.

11. In the light of the above submissions, now the points that arise for consideration in this appeal are:

- (1) Whether the death of the deceased Pazhani @ Pazhanivel was due to electrocution?
- (2) Whether the appellants were negligent in maintaining the electrical lines properly and to prevent any such accident?
- (3) Whether the compensation awarded by the trial Court is based on proper appreciation of evidence?
- (4) To what relief?

Points 1 to 4:

12. The deceased Pazhani @ Pazhanivel, who is the son of the plaintiffs 1 and 2, while working on the roof top of one Dhanapal's house at Narayanapuram, accidentally contacted the low level electrical line passing over the said house and thereby sustained burn injuries on 08.06.2008 at 6.00 p.m. Immediately, he was taken to Government Hospital, Panruti and then to Kannan hospital, Cuddalore and thereafter to Government Hospital, Pondicherry. However, he succumbed to injury on 25.8.2008. After accident the matter was reported to the police with some delay and a case was registered under C.S.R.No.95 of 2008. The main defence taken by the defendants in the written statement is that the accident was due to negligence act of the deceased. According to the defendants, the wrong doer cannot claim compensation. Further, it is the contention of the defendants that no police complaint regarding the accident was given immediately and that, postmortem has not been done on the body of the deceased. Hence, it is the contention of the defendants that they are not liable to pay compensation.

13. The father of the deceased was examined as P.W.1 to prove the nature of injuries sustained by his son. One Dasappan, who is said to be the eye witness of the accident, was examined as P.W.2. P.W.2 in his evidence has admitted that on 08.06.2008, the deceased, while working in the house of one Dhanapal, got electrical shock from the wire passing over the said house and he was thrown out and was immediately taken to the hospital.

14. Even though the defendants have taken yet another defence in the written statement that house of the said Dhanapal was constructed underneath the overhead lines, which itself is against law, absolutely, no evidence, whatsoever, placed to substantiate the said contention. D.W.1, in his evidence, has categorically admitted that he does not know where the said house is located and when the house was constructed by the said Dhanapal. D.W.1 has also admitted in his evidence that he does not know when the high voltage line was fixed at the particular area and whether the same was passing over the house of the said Dhanapal. Absolutely, there is no evidence, whatsoever, placed by the defendants to show that the house was constructed underneath the high Voltage wire passing in the said locality.

15. Even assuming that anybody had put up construction below the high voltage wire passing in the locality by violating the law, it is the duty of the Electricity Department to take action against such occupants and to take some steps either to remove the said building from the particular area or to make some alternative arrangements by shifting the high voltage line to some other place. But they have not taken any steps in this regard.

16. It is to be noted that the Department, which is engaged in hazardous or inherently dangerous activity, more particularly, in generation of electricity, are bound to take all the safety measures to prevent any untoward incident. Even assuming that the negligence was on the part of the deceased at the relevant point of time, it is well settled that act of stranger is exception to rule of strict liability. Even assuming that the deceased, while working in the roof top of the house was carrying some articles with him and with the same negligently touched the electrical line and thereby caused accident, the defendants alone are responsible for such act as it is their duty to prevent such accident by taking safety measures.

17. It is pertinent to point out that the defendants, being the suppliers of energy, have to conduct periodical inspection as to whether any electrical wire is passing over the house and

the same is within the reach of people. Admittedly, allowing high voltage wire passing at such low level itself is negligence on the part of the defendants. Therefore, the defendants cannot take the defence that only due to negligence on the part of the deceased, the accident had occurred.

18. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court reported in 2002(1) CTC 362, (M.P.Electricity Board v. Shail Kumari), wherein it has been held as follows:-

" The basis of such liability is the foreseeable risk inherent in the very nature of such activity. This is based on the doctrine of "strict liability". The concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the third 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."

....."where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands vs. Fletcher."

From the above judgment, it is clear that the act of stranger is exception to rule of strict liability. At the risk of repetition, this Court once again points out that allowing electrical lines passing in low level which could be reached anybody by their contact directly or incidentally itself is a negligence on the part of the defendants. Therefore, the defendants cannot take the defence that the accident was due to negligence on the part of the deceased.

19. Yet another contention of the learned counsel for the defendants is that FIR has not been registered immediately after the accident and that postmortem has also not been conducted on the body of the deceased. It is not in dispute that immediately after the accident, the deceased was admitted in the hospital. In fact the said fact has been spoken by P.W.1 and P.W.2. The fact that the death was due to

electrocution is also not denied by the defendants. Ex.A4 is the legal notice sent by the plaintiffs, wherein they have specifically stated about the factum of electrocution. Ex.A7 is the copy of the accident register, which shows that the deceased sustained electrical burns on 08.6.2008 in the evening hours while working in the top roof of the house. Ex.A8, discharge slip, issued by the Government Hospital, Pondicherry, dated 06.08.2008, shows that the deceased, in fact, had 40% burn injuries. Discharge slip also shows that due to burn injuries, amputation was done over the lower limb of the deceased. The death certificate is also filed, which is marked as Ex.A2. Medical bills for a sum of Rs.43,095/- have been produced under Ex.A9 (series), which proves the fact that while the deceased was in hospital from 08.06.2008 till 15.6.2008, various expenses have made by the parents i.e. the plaintiffs. Therefore, merely because FIR has not been filed and postmortem has not been done, that cannot be ground to deny the factum of accident itself.

20. It is to be noted that police complaint was also given by the plaintiffs with regard to the accident on 02.7.2008. Having received the first information given by the plaintiffs, the concerned police ought to have investigated the matter. But the same has not been done by keeping it pending in CSR stage itself. They should have completed all the formalities by filing FIR. Whereas in this case, they have not done so. Ex. A1 would also clearly show that the deceased was electrocuted and had taken treatment in the hospital. Therefore, mere failure to file a formal FIR by the police authorities and referring the body of the deceased for postmortem cannot be a ground to dispute the entire accident itself. P.W.1 appears to be innocent villager. He cannot be expected to know all the formalities. It was the duty of the police to investigate the matter by filing formal FIR whenever they received information. But they have not done so. Therefore, innocent plaintiffs cannot be found fault with for non filing of FIR as well as for not referring the body of the deceased for postmortem. Therefore, the contention of the appellants/ defendants on that score cannot be a ground to non suit the plaint.

21. Insofar as quantum of compensation is concerned, admittedly, as per the death certificate, the deceased was aged about 21 years. Even assuming that there is no proof to fix the income of the deceased, when monthly income of the deceased is taken as Rs.3000/-, after deducting $1/3^{\text{rd}}$ towards his personal expenses, the total contribution to the family would be Rs.24,000/- p.a. ($3000 \times 12 = \text{Rs.}36,000 \times 1/3$). If 17 multiplier is applied as per II Schedule of the Motor Vehicle Act 1988, the compensation payable to the plaintiffs would be Rs.4,08,000/- ($\text{Rs.}24,000 \times 17$). But the trial Court has awarded a sum of

Rs.4,00,000/- only towards compensation. Further, the trial Court, taking into consideration Ex.A9 series (medical bills), has awarded a sum of Rs.43,095/- towards medical expenses. Therefore, the judgment and decree of the trial Court is well balanced and it does not require any interference. These points are answered accordingly.

22. The plaintiffs have not preferred any cross appeal claiming enhancement. Since the interest awarded by the Trial Court is very reasonable, the same is also confirmed.

In the result, the appeal stands dismissed. The judgment and decree of the trial Court is confirmed. No costs. Connected MP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer
Tamil Nadu Electricity Board
Cuddalore.
2. The Assistant Engineer
Tamil Nadu Electricity Board
Palur, Panruti Taluk,
Cuddalore District
3. The Additional District Judge,
Fast Track Court No.2
Cuddalore

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.26245
+1cc to Mr.V.Viswanathan, Advocate, S.R.No.25744

A.S.No.1050 of 2012

CS/24/07/17