

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM :

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

S.A.No.531 of 2015

1. Andal
2. Ammani Ammal
3. Murugan
4. Vadivel
5. Moorthy

... Appellants/Appellants/Plaintiff

Vs.

The Superintending Engineer
Tiruvannamalai Electricity System
Tamil Nadu Electricity Board
Vengikkal
Thiruvannamalai.

... Respondents/Respondent/Defendant

PRAYER : This Appeal is filed under Section 100 C.P.C., against the Judgment and decree dated 01.02.2010, made in A.S.No. 30 of 2011 on the file of the District Judge, Thiruvannamalai, Thiruvannamalai District modified the Judgment and Decree dated 18.12.2006 passed in O.S.No. 66/2005 on the file of the Additional Subordinate Judge, Thiruvannamalai.

For Appellants : Mr.F. Terry Chellaraja

For Respondents : Mr. V. Viswanathan,
Standing Counsel for TNEB

J U D G M E N T

This Second Appeal arises out of the Judgment and decree dated 01.02.2011, made in A.S.No. 30 of 2010 on the file of the District Judge, Thiruvannamalai, modifying the Judgment and Decree dated 18.12.2006 passed in O.S.No. 66/2005 on the file of the Additional Subordinate Judge, Thiruvannamalai.

2. Brief facts of the case is as follows :-

The 1st appellant is the wife, the 2nd appellant is the mother and appellants 3 to 5 being the children of one

Dharmalingam, filed the original suit in O.S. No.66 of 2005. The said Dharmalingam was electrocuted since he touched the stay wire of the electric post, situated opposite to his house in the Panchayat Street. He died on the spot due to leakage of power supply. The appellants/ plaintiffs filed the suit for compensation of Rs.5 lakhs, with a subsequent interest at the rate of 12% per annum, with effect from the date of the death of said Dharmalingam, i.e. 03.08.2003. The respondent filed a written statement in the aforesaid suit. Considering the oral and documentary evidences adduced by both the parties, the court below has held that the appellants/ plaintiffs are entitled for a total compensation of Rs.2,00,000/-.

3. Aggrieved by the quantum of compensation, the appellants/ plaintiffs filed an appeal in A.S. No. 30 of 2010 before the District Judge, Tiruvannamalai. The contention of the appellants in the appeal is that the Trial Court has not appreciated the case of the plaintiffs, even after coming to the conclusion that the said Dharmalingam died due to electrocution and without considering the age and avocation, has granted a meagre compensation amount. The learned counsel for the appellants would submit that the Lower Appellate Court has enhanced the compensation amount, by adopting '13' multiplier, fixing the monthly income of the deceased Dharmalingam @ Rs.1750/- and enhancing the financial contribution at Rs.2,73,000/-. By adding Rs.5000/- towards transportation expenses, the total compensation was enhanced to Rs.2,78,000/- in the appeal suit. Being not satisfied with the enhanced compensation amount, by the lower Appellate Court, the present Second Appeal is filed before this Court.

4. According to the learned counsel for the appellants, both the Courts below have failed to consider that the appellants are entitled for a monthly contribution of Rs.2400/- per month. But, both the courts have not considered the aforesaid contribution, after deducting 1/5th of the monthly income of the deceased towards personal expenses. Therefore, the appellants are entitled for enhancement of compensation by adopting 1/5th deduction.

5. The learned counsel for the respondent would submit that the said method of adoption of 1/5th deduction cannot be applied to the case on hand, since the deceased was electrocuted. Further, the compensation amount awarded by the lower Court has already been enhanced by the lower Appellate Court and so there is no warrant to interfere with the judgment and decree passed by the lower Appellate Court.

6. Heard the submissions made by the learned counsel for the appellants and the respondent and perused the material available on record.

7. At the time of admission, notice was ordered by this Court. The appellants have raised the following question, as one of the substantial questions of law, in this Second Appeal:-

Whether the court below is right in fixing Rs.1750/- as the contribution of the deceased to his family, even though there was no contra evidence on the part of the respondent?

The submission of the learned counsel for the appellants that both the courts have failed to consider the financial contribution of the deceased to his family and the deduction for his personal expenses in calculating the financial contribution, to the appellants, since the entire family were depending only upon the income of the deceased. The deceased was earning about a sum of Rs.3000/- per month and also had an additional income from agriculture. At the time of accident, the age of the deceased was 45 years and the life time of the deceased would be more than 20 years. By considering the aforesaid aspects, the compensation of Rs.2,00,000/- awarded by the lower court, was enhanced to Rs.2,78,000/- by the lower Appellate Court. The lower Court has fixed the monthly income of the deceased as Rs.3000/- per month. While so, accepting the monthly income as Rs.3000/-, after deducting his personal and professional expenses, the lower Appellate court, have considered only Rs.1750/- as his monthly contribution to the family.

8. Therefore, this Court consider that the contribution of the deceased to the family, deducting 1/4th towards his personal expenses would be fair and reasonable. Hence, the appellants are entitled for a sum of Rs.2250/- as a monthly income attributable to the appellant's family. In view of the fixation of the monthly contribution of the deceased family at Rs.2250/- per month, the financial contribution of the deceased to his family is calculated as Rs.2250 x 12 x 13 = Rs.3,51,000/-.

9. Accordingly, the Second Appeal is partly allowed. The judgment and decree passed by the lower Appellate Court is modified by enhancing the compensation amount to Rs.3,51,000/- from Rs.2,78,000/-. The respondent is directed to deposit the

entire award amount, before the court below, within a period of eight weeks from the date of receipt of a copy of this order. If the same is not deposited within such time, the appellants are entitled to an interest @ 9% per annum, for the deposited amount, from the date of this order. No order as to costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

avr

To

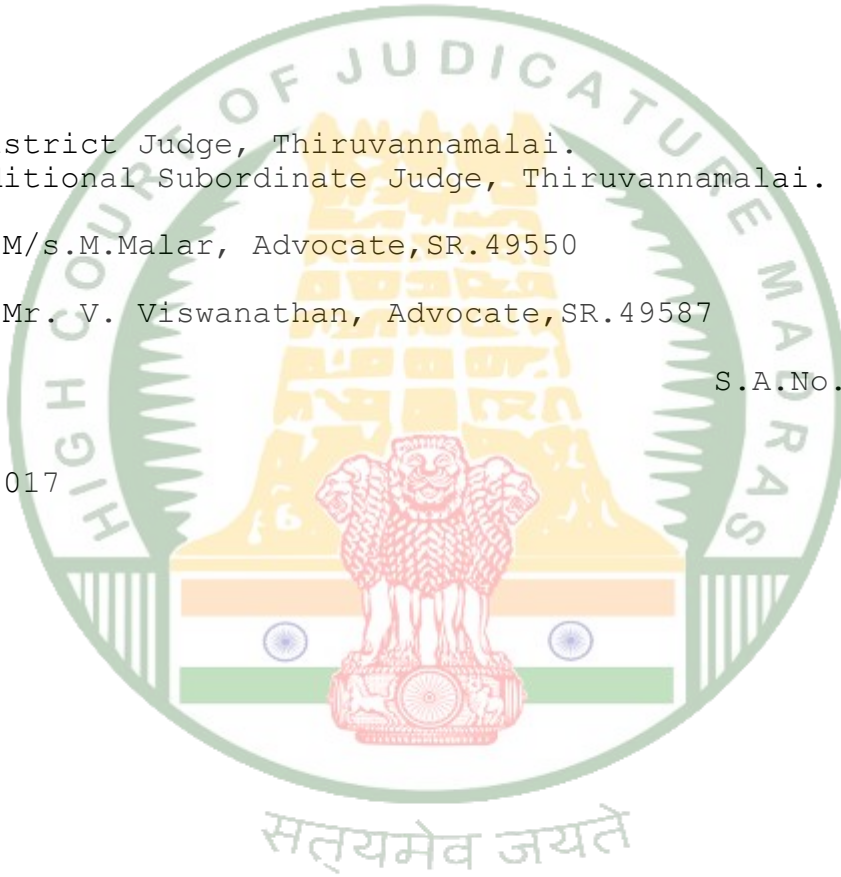
1. The District Judge, Thiruvannamalai.
2. The Additional Subordinate Judge, Thiruvannamalai.

+ 1 cc to M/s.M.Malar, Advocate,SR.49550

+ 1 cc to Mr. V. Viswanathan, Advocate,SR.49587

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GP (CO)
NR 22/11/2017



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