

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

A.S.No.267 of 1998

JUDGMENT:

This appeal is arising out of the judgment and decree dated 01.11.1994 passed in O.S.No.31 of 1993 on the file of the District Judge, Adilabad.

The appellants are the defendants and the respondent is the plaintiff in the suit.

For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

The brief facts of the case are that the plaintiff filed the suit for damages of Rs.1,50,000/- on account of the injuries received by him in an accident occurred on 26.12.1991 in Ashram School when a water tank burst and fell on the ground. The plaintiff was struck by the big hard material in the accident and suffered bleeding injuries on his head, chest and back side. The plaintiff has suffered mental shock because of the injuries and he suffered fracture of leg and he became permanently disabled and unable to walk and attend to his day to day works. The Project Officer, ITDA, Uttoor-2nd defendant has visited the plaintiff in the hospital and granted exgratia of Rs.1,000/- to the plaintiff and further assured to extend exgratia. The plaintiff has approached the 2nd defendant number of times, but no amount was paid to him. The plaintiff has spent an amount of Rs.15,000/- for his treatment and as he became permanently disabled, he claimed compensation of Rs.1,50,000/- towards special and general damages. It is further stated that the accident has occurred in the premises of Ashram School at Anderbandh. The water tank was got constructed by 2nd defendant. On the direction and sanction

of 2nd defendant only, the water tank was constructed, without taking proper care, which led to the accident. It is further stated that the 2nd defendant and the State are liable to pay the compensation to the plaintiff and all the defendants are jointly and severally liable to pay compensation.

The 4th defendant had filed his written statement and the defendants 1 to 3 have filed a memo adopting the written statement filed by him.

It is stated in the written statement that the District Collector Adilabad-1st defendant *vide* proceedings dated 10.10.1986 sanctioned Rs.40,000/- under flood damage and repairs to Ashram School building at Anderbandh Village, as a part of that work, two water tanks were constructed on the request of the villagers, one tank in the premises of Ashram School and another tank in the village. The construction work was entrusted to Sri Mahajan Laxman contractor by proceedings dated 15.10.1987 and the work was finalized on 31.03.1987. It is denied that the tank in the Ashram School was burst and on the other hand it is contended that the tank was constructed in the village was burst due to which the plaintiff received the alleged injuries. It is further stated that the tank in the village is kept idle till October, 1991 as there was no water in the village due to water scarcity. During the period in between 31.03.1987 till October, 1991, the miscreants have removed the G.I. pipes and damaged the plastering of the water tanks which led to cracks and leakages. Since October, 1991, the tank was being maintained by the villagers only by pumping water from irrigation well and using for drinking water. It is further stated that as the villagers have maintained the tank, the defendants are not liable to pay the suit claim. It is also stated that

the construction work was entrusted to one contractor by name Mahajan Laxman, who is a necessary party to the suit. If there is any defect in the construction, the contractor is liable for the same and not the defendants. It is further stated that the suit is bad for non-joinder of necessary parties. It is also stated that the damages claimed is excessive and exorbitant and therefore, the suit is liable for dismissal.

Basing on the above pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled for damages as prayed for?
2. Whether the tank in the Ashram School was burst as alleged by the plaintiff?
3. Whether Mahajan Laxman contractor is the necessary party to the suit and whether the suit is liable to be dismissed for non-joinder of necessary party?
4. To what relief?

On behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A1 to A23 were marked. On behalf of the defendants, DW.1 was examined and Ex.B1 was marked.

The trial Court on consideration of the evidence on record has answered issue Nos.1, 2 and 4 in favour of the plaintiff and decreed the suit and awarded compensation of Rs.1,20,000/- with interest at 12% per annum.

As far as issue No.3 is concerned, the trial Court has observed that Mahajan Laxman is not a necessary party to the suit and also held that as already mentioned, it is open to the defendant to proceed against the contractor if the accident occurred because of his negligence in executing the work.

Learned counsel for the appellants/defendants mainly contended on three points. Firstly, it is contended that there is discrepancy in the

evidence of the witnesses with regard to the age of the plaintiff. The plaintiff is said to have been studying 9th class in Ashram school, whereas his age was shown as 20 years, which is not matching the class in which he was studying. As far as this contention is concerned, the trial Court basing on the facts, arrived at a conclusion that the plaintiff was aged about 20 years by the date of accident and awarded compensation accordingly. There is no evidence on record to show that he was not aged about 20 years though it is stated that he was studying 9th standard. Therefore, I do not see any valid grounds to upset the evidence of the trial Court in this regard.

The second contention is that there are two water tanks constructed in the village. One tank in the school and other tank in the village constructed by one contractor Mahajan Laxman. It is contended that there is no clear evidence on record to show that under which tank the petitioner has received injuries and therefore, the very accident is not proved. The trial Court observed in para 7 of the judgment that as per the evidence of PWs.1 and 3 and DW1 there is controversy as to which of the tanks fell and caused injuries to the plaintiff. It is further stated that according to the plaintiff and his father, the water tank in Ashram School collapsed resulting in injuries to the plaintiff. According to the defendant, the water tank outside the school burst and resulted in the accident. It is further observed by the trial Court that in Ex.A1 notice, it is mentioned that the water tank in the school burst and fell on the plaintiff and caused injuries. The Government has not issued any reply except the evidence of DW1 stating that there is no documentary evidence to show that the water tank which fell and caused injuries to the plaintiff. The trial Court on considering the evidence has come to conclusion that the plaintiff had

suffered injuries when the water tank in Ashram School collapsed and fell on him. The trial Court also based on the fact that the Project officer has paid exgratia to the plaintiff, came to conclusion that the plaintiff suffered injuries in the accident, when the water tank burst and fell on him.

D.W.1-Deputy Executive Engineer stated in his evidence that in Anderbandh Village, ITDA constructed two water tanks ground level service reservoirs. One was constructed in the premises of the school and another was on the road side at a distance of 100 meters from the school. These two tanks were constructed by ITDA through contractors. The water tank constructed outside the school was being maintained by the villagers. The plaintiff suffered injuries when the tank constructed outside the school was collapsed. It is the evidence of DW1 that the plaintiff suffered injuries due to the water tank, which was constructed outside the school, when it had collapsed. In that case what made the project officer to pay exgratia of Rs.1,000/- and also promised to pay more amount of exgratia later if there was no liability for him. It is a fact that the plaintiff received injuries by fall of a water tank in the Ashram school. In fact, D.W.1 has not an eye witness to the accident. Therefore, the trial Court has rightly awarded the compensation by holding that the water tank fell in the school only caused the injuries to him basing on the evidence of P.W.1. Therefore, I do not see any force in the contention of the learned counsel for the appellants/defendants.

The last submission made by the learned counsel for the appellants/defendants is that the contract of construction works was entrusted to one contractor Mahajan Laxman and as he did not take proper care to construct the water tank, the accident might have occurred.

Learned counsel for the appellants/defendants further submitted that the trial Court has observed in issue No.3 that it is open to the defendant to proceed against the contractor, if the accident occurred because of the negligence in executing the work but the trial Court did not observe the same either in the result portion of judgment or in the decree passed by the trial Court. As a matter of fact the observation in issue No.3 is sufficient for the defendant to proceed against the contractor if the accident occurred because of his negligence in executing the work. The Government is always at liberty to proceed against the contractor for the inefficiency shown by him in construction of the work, if they found him responsible for the defective construction.

As a matter of fact, the contractor is not a party before the trial Court or in this appeal. The trial Court made a finding basing on the evidence adduced by the defendants. Even if there is no observation in this regard, the Government is always at liberty to proceed against the contractor if the accident had occurred because of his negligence in executing the work. The Government entrusted the work to the contractor and the contractor is expected to work efficiently and complete the same. It is the internal arrangement between the Government and the contractor and therefore, the Government is always at liberty to proceed against the contractor in execution of the work and there may not be a direct finding in this appeal or in the judgment as the contractor was not made as a party either before the trial Court or before this appeal. Since the injured is a third party whose rights are affected, the respondents are liable to pay compensation.

In view of the foregoing reasons, I am of the considered view that the judgment of the trial Court is not suffering with any infirmity or illegality. Therefore, the finding of the trial Court is confirmed.

In the result, the appeal is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDI SEVA SHYAM PRASAD,J

Date : 16.03.2017
ssp

