

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

A.S.No.1398 of 1997

JUDGMENT:

This appeal is arising out of the judgment dated 14.08.1997 passed in O.S.No.85 of 1991 on the file of the Subordinate Judge, Medak.

The appellant is the 1st defendant and the respondents 1 to 3 are the plaintiffs and respondent No.4 is the 2nd defendant in the said 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 plaintiffs 1 and 2 are parents and plaintiff No.3 is the wife of the deceased Bantu Arjunaiah. On 28.10.1990, the deceased went to the fields as usual at 4:00 pm to get green grass from the fields for the purpose of feeding the animals. While he was crossing the water stream, he came into contact with high tension live wire which has fallen on the earth from the pole. The deceased got electrocuted due to the electric wire falling from the pole and died on the spot. The Sarpanch of the Village lodged a complaint before the police, Jogipet and the police registered a case in crime No.160 of 1990 and conducted panchanama and sent the body for post-mortem examination. The plea of the plaintiffs is that the deceased died due to the negligence on the part of the defendants. Therefore, they claimed compensation of Rs.3,00,000/-.

The deceased was aged about 23 years and he was hale and healthy and he was an agricultural labourer, he used to earn Rs.50/- per day and maintaining the family. The plaintiffs got issued a legal notice to the defendants 1 and 2 and the 1st defendant gave evasive reply and the 2nd defendant did not give any reply.

Defendant No.1 filed his written statement in the suit stating that the trial Court has no jurisdiction to entertain the suit. The relationship between the parties was also disputed. It is also alleged that the deceased did not die due to the electrocution of live wire which has fallen on the earth detached from the pole. It is further alleged that the police given final report in crime No.160 of 1990 without filing any charge-sheet against defendants 1 and 2 or against any of its employee. It is denied that defendants 1 and 2 were negligent in not taking care of high tension electric wires. It is also the case of defendants that before institution of the suit by the plaintiffs 1 and 2, they have filed a claim before the District Consumer Forum at Sanga Reddy claiming an amount of Rs.99,000/- *vide* C.D.No.40 of 1991. The claim was dismissed and plaintiff No.3 joined and filed the present suit claiming Rs.3,00,000/-. It is also alleged that the Court fee paid was in sufficient. The plaintiffs are not entitled to claim any interest and prayed for dismissal of the suit.

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

1. Whether the plaintiffs are entitled for the compensation amount as prayed for?
2. Whether the claim of compensation of Rs.3,00,000/- is excessive?
3. To what relief?

On behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A1 to A11 were marked. On behalf of the defendants, D.W.1 was examined and Exs.B1 to B3 were marked.

The trial Court on consideration of the evidence, answered issue No.1 and issue No.2 in favour of the plaintiffs and decreed the suit. In

issue No.3, awarded compensation of Rs.3,00,000/- with interest at 6% per annum.

In this appeal, the appellant/1st defendant has raised three contentions. Firstly, it is contended that there is no negligence on the part of 1st defendant. Secondly, there is no complaint from the land owner to contribute negligence on the part of the 1st defendant. Thirdly, it is contended that the judgment and decree passed by the trial Court is an *ex parte*.

This appeal is of the year, 1997. This appeal is coming up for hearing and at the stage of hearing, learned counsel for the appellant/1st defendant submitted to pass orders on merits. There is no representation on behalf of the respondents though sufficient opportunity is given. Therefore, the appeal is disposed of basing on the material available on record.

As far as the first contention of the appellant/1st defendant is concerned, the trial Court has clearly held in issue No.1 basing on the evidence of P.W.2 V.Malliah of Masanpalli Village. According to his testimony, the deceased died due to electrocution when he came in contact with live wire in the fields of Shankaraiah. He filed complaint before the police.

On behalf of the defendants, the Managing Director was examined as D.W.1. According to him, there was no negligence on the part of 1st defendant or its employee for the death of the deceased. On behalf of the plaintiff, Ex.A1 certified copy of docket order dated 13.09.1991 in C.D.No.40 of 1991 on the file of District Forum at Sangareddy, was marked. It shows that the plaintiff has filed a case before the Consumer Forum claiming compensation for the same cause of action. Ex.A2 is the

certified copy of the complaint under Section 12 of Consumer Protection Act, 1986 claiming Rs.99,900/- towards compensation against the respondents therein, who are defendants herein. Ex.A3 is the Xerox copy of memo stating that the complainants, who are plaintiffs have filed suit for damages in the Court of Sub-Judge, Medak and the complaint was withdrawn from the file of Consumer Forum. This clearly shows that the plaintiffs after withdrawing the complaint from the Consumer Forum have preferred the said suit before Subordinate Court Judge, Medak. Therefore, the contention raised by the appellant/1st defendant that the plaintiffs have filed a suit again cannot be accepted.

Exs.A4 to A8 are the photographs, which shows that the live wire which falls from the pole was found lying across the body of the deceased. Ex.A9 is the office copy of the legal notice dated 25.04.1991. Ex.A10 is the postal acknowledgement and Ex.A11 is the reply notice to Ex.A9. These documents clearly show that the plaintiffs got issued a legal notice to the defendants and the defendants have acknowledged the same and gave reply notice.

It is revealed in the evidence of DW1 that he has no personal knowledge about the incident. Therefore, the trial Court placing reliance on the evidence of PWs.1 and 2 coupled with the documents Exs.A1 to A11 came to the conclusion that the deceased died due to electrocution by coming into contact with live wire fitted to the electric pole. The said electrocution was due to negligence of the defendants in fixing the live wire to the pole. It is also observed by the trial Court that there is no rebuttable evidence brought on record by the defendants to show that they were not negligent by fixing the live wire to the pole. Therefore, the trial Court has properly appreciated the evidence on record and gave a

clear and categorical finding on issue No.1 that the plaintiffs are entitled for compensation due to the negligence on the part of the deceased.

The contention of the appellant/1st defendant that there is no complaint from the land owner is not material to this case. In view of the evidence of PWs.1 and 2 and the documents Exs.A1 to A11, it clearly proves that the death of the deceased occurred due to electrocution and high tension live wires, which were not taken care by the defendants 1 and 2. Therefore, I do not see any force in this contention.

The appellant/1st defendant ought to have taken steps for setting aside the *ex parte* decree passed by the trial Court, if it is aggrieved by that. Therefore, I do not see any force in the contention of the appellant/1st defendant.

By and large, on consideration of the entire evidence on record, I do not find any valid reasons to interfere with the judgment passed by the trial Court in fixing the liability against the appellant/1st defendant and also awarding compensation in this matter. Therefore, I do not see any merits in this appeal.

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
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