

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.1827 of 1998

JUDGMENT:

This appeal is filed by the second defendant/A.P. State Electricity Board against the judgment and decree dated 19.01.1998 in O.S.No.32 of 1985 on the file of the Senior Civil Judge, Mahabubnagar.

This is a first appeal and for the sake of convenience, the parties are referred to the plaintiffs and the defendants only.

The brief facts of the plaintiffs' case are that 1st plaintiff is the mother of the deceased-Gobriya, 2nd plaintiff is senior widow and 3rd plaintiff is her son, through deceased-Gobriya. 4th plaintiff is the junior widow of Gobriya and plaintiffs 6 to 8 are minor children, through deceased-Gobriya. 9th plaintiff is the mother of deceased-Narsimhulu @ Narsappa and 10th plaintiff is his wife. Plaintiffs 11 & 12 are his minor sons living under the guardianship of 10th plaintiff, the natural mother. 13th plaintiff is the mother of deceased Hanmanthu, s/o. Pedda Buggappa. 14th plaintiff is his wife and 15th plaintiff is his minor daughter now living under the guardianship of 14th plaintiff, the natural mother.

The 1st defendant owns land at Thammadapally thanda, hamlet of Nidugurthy Village. There is a well in that land. He gets the land irrigated through well water with the help of electric motor. He got his land fenced with steel wire.

He arranged the electricity to pass through said fencing wires alleged to be for the purpose of safeguarding the crops for which he had no licence. The conduct of the 1st defendant amounts to theft of electric energy. His act constitutes not only punishable under relevant law, but also carelessness and negligence on his part. Theft of electric energy on the part of the first defendant was also due to the lethargy, carelessness, dereliction of duties and negligence on the part of the employees of second defendant/APSEB at Narayanpet.

The deceased Kurva Gudise, Narsimhulu @ Narsappa and Kurva Hanmanthu tethered their respective sheep at the instance of deceased-lambada Gobriya in his land on 02.07.1984. There were rains in the village on that day. All three people – Gobriya, Narsimhulu and Hanumanthu died on the said passage near the land of first defendant due to electrocution. Under the circumstances, defendants 1 & 2 are jointly and severally liable to make payment of just compensation of Rs.50,000/- each to plaintiffs, in view of the fact that they were only earning members of the family.

Defendants 3 to 6 did not file their written statements while the case against defendants 7 to 9 is dismissed.

The 2nd defendant/APSEB has filed written statement stating that the 2nd defendant does not dispute the fact of the location of the land and well at the hamlet of Thimmadapally, Nidugurthy village. But, it is denied the fact of fencing the land with steel wire and that 1st defendant had installed wires

for the passage of electricity into the fenced steel wire for the purpose of safeguarding crops. The 1st defendant was given electric supply as consumer SC No.31 LT for agricultural pump set. But, it appears that the consumer had used the electric energy for running electric current through the board wire on the ground which is not only an unauthorized act but violation of Indian Electricity Act and Rules made thereunder. The 1st defendant had extended the supply of electric energy to the fencing wire through the mains during the night time only to escape from being detected by the employees of APSEB. The 1st defendant had abused the electric energy under his own risk. The use of the electric energy by 1st defendant could not be detected by the employees of APSEB for the aforesaid reasons. The 2nd defendant has no knowledge whether there were rains in the village on 02.07.1984 and as a result of the rains, the water was flowing in the fields and on the passage. The 2nd defendant denied the fact that Narsappa and Kurva Hanmanthu had tethered their sheep at the instance of Gobriya. The 2nd defendant has no liability. It is further averred that the suit is filed without any cause of action and the claim of the plaintiffs is unjust and without reasonable or probable cause against the 2nd defendant.

Based on the above pleadings, the lower Court framed the following issues for trial:

- i) Whether this Court has no jurisdiction to try this suit?
- ii) Whether there was any negligence or omission on the part of the employees of 2nd defendant?
- iii) Whether the 2nd defendant is liable to pay compensation to the deceased persons?
- iv) Whether the plaintiff is entitled to the compensation as prayed for?
- v) To what relief?

For the plaintiffs, PWs.1 to 6 were examined and Exs.A.1 to A.8 were marked. For the defendants, DW.1 was examined and no documents were marked.

After considering the oral and documentary evidence, the Senior Civil Judge, Mahabubnagar, vide his orders dated 19.01.1998 decreed the suit granting damages of Rs.50,000/- each for the death of plaintiffs along with the future interest at 6% per annum from the date of suit till the date of realization along with costs. The main contesting defendant in the suit/APSEB has filed the present appeal challenging the findings of the lower court.

Heard the learned counsel for all the appearing parties.

The case of the appellant/second defendant-APSEB is that APSEB is not liable for the occurrence of the accident and that consequently, it cannot be made liable for the damages also. It is the fundamental contention of the learned counsel for the appellant that the theft of electricity was conducted by the first defendant and therefore, the liability, if any, can only be fastened on to the first defendant, who has

committed an illegal act. It is the contention of the learned counsel that the death occurred due to the theft of electricity by the first defendant and not due to any fault of the appellant.

On the other hand, the learned counsel for the first respondent/first defendant strongly argued that the appellant was not vigilant and did not prevent the theft of electricity. As a result of the inaction of the appellant in preventing the theft, three innocent people died due to electric shock. Therefore, he states that there is a failure of the duty to take care and therefore, the appellant is liable to pay the damages.

In this case, the facts which are not really in dispute are that the death of the three plaintiffs occurred due to electric shock that they sustained. The electric shock or electrocution occurred because the first defendant utilized the power from his service connection to electrify his boundary fencing. On the fateful day i.e., on 02.07.1984 there were heavy rains and the entire area surrounding the field was wet. The three deceased came into contact with the live electric current and they consequently died.

The crucial evidence in the opinion of this Court is the evidence of DW.1, who is the Assistant Divisional Engineer of that area. He admits in the course of chief examination itself that the accident occurred on 02.07.1984 in the field of the first defendant. He also admits that the first defendant was given service connection No.31 to draw water for his pump

set, but he had taken the electricity from his motor main switch and connected to the fence. As a result of this, the innocent workers were also electrified. The witness admits that there were rains on the night of 2/3rd July, 1984 and that the deceased came into contact with the live fencing and died. He admits that there are Inspectors, Linemen, Assistant Linemen and Helpers who were entrusted with the job of field inspections. He also states that the first defendant used to draw the power in the night so as to avoid detection. In the cross-examination, he admits that there is a separate Vigilance Wing appointed to verify theft of energy also.

The learned counsel for the appellant argued that no liability can be fastened on to the appellant as there was theft of electricity by the first defendant. On the other hand, it is the submission of the learned counsel for the first respondent that the appellant had a “greater” duty to take care. He argued that electricity is inherently dangerous and that therefore, the respondents had a greater duty to take care to ensure that the theft of electricity etc., does not take place. It is the duty that is cast upon the second defendant and their staff to ensure that the inherent dangerous electricity is used safely and that illegal use is prevented. Therefore, he argued that the Rule in *Rylands v. Fletcher* applies and that the failure to take care is enough to sustain this action. He also argued that the maxim *res ipsa loquitur* applies to this case. The accident and the cause of death are not in dispute

according to the learned counsel. Therefore, the failure of the appellant to take care is patently visible according to the learned counsel. He relies upon ***Vohra Sadikbhai Rajakbhai v. State of Gujarat***¹ and argues that the appellants had not taken adequate or proper care. So he claims damages. He strongly urges that the rule of strict liability applies as electricity is inherently dangerous.

This Court finds sufficient force in the contentions by the learned counsel for the first respondent. This Court is of the opinion that the failure of the appellant to check the misuse of electric power led to the present accident. If the officials of the appellant were vigilant and were actively pursuing such cases of theft, the wrong doers would not have attempted to commit theft of electricity. The inaction of the appellant and their staff led to the present situation, as electricity was inherently dangerous, a greater duty to take care was cast upon them and therefore, failure has led the present accident.

This Court therefore agrees with the findings of the lower Court on the issue of negligence and concurs with the finding of the lower Court on the issues 2 to 4 decided against the appellant and in favour of the plaintiffs. Consequently, issue No.5 granting decree is also upheld along with the interest. The other pending issue is about the jurisdiction of the court. No serious argument was advanced on this issue.

¹ 2016 (12) SCC 1

Nevertheless, this Court feels that as the action is based on the tortious liability, this Court has jurisdiction to deal with the matter.

In the result, the appeal is dismissed. The judgment and decree dated 19.01.1998 of the Senior Civil Judge, Mahabubnagar in O.S.No.32 of 1985 is hereby confirmed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 16.02.2018
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D.V.S.S. SOMAYAJULU, J

