

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Appeal Suit No.2391 of 1999**

**JUDGMENT:**

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful defendants is directed against the decree and judgement, dated 26.02.1999, of the learned Senior Civil Judge, Medak, passed in OS.No.39 of 1995.

2. I have heard the submissions of Sri R. Vinod Reddy, learned standing counsel for TSTRANSCO appearing for the appellants, and of Sri Vinod Kumar Deshpande, learned senior counsel appearing for the respondent. I have perused the material record.

3. The parties in this appeal suit shall hereinafter be referred to as the plaintiff and the defendants as arraigned in the original suit for convenience and clarity.

4. Before proceeding further, it is necessary to refer to the cases of the parties.

5. The case of the plaintiff, in brief, is this: - 'The plaintiff is the mother of Jangiti Bikshapati, the deceased. On 16.02.1994, when her said son was proceeding to Yelmakanna village, Kowdipally Mandal, 11 KV electric wire suddenly fell on him at Eluka cheruvu. On that, her son died on the spot. Her son was aged about 21 years at the time of his death. Two other persons also died in the same incident. He was the sole bread winner of the poor family. Due to her son's death, she suffered heavy and irreparable loss and was compelled to face starvation. The plaintiff belongs to backward class and is

down trodden. The plaintiff represented the matter to the defendants and the District Collector. The defendants promised to make payment of reasonable compensation; the District Collector has stated that payment of compensation is under consideration; but, the plaintiff has not received any compensation so far. The plaintiff by her representations, dated 28.02.1994, 27.05.1994, 12.06.1994, 26.08.1994, 21.10.1994, 28.11.1994, 29.12.1994, 04.02.1995, 06.05.1995, 18.07.1995 and 24.11.1995 repeatedly requested the concerned to do the needful. As there was no response to her representations, having been disappointed, the plaintiff got issued legal notice, dated 25.11.1995, to the defendants. Though the defendants received the same, they did not give any reply. Hence, the suit is filed claiming compensation of Rs.1,40,000/- towards the loss of the life of the deceased son of the plaintiff who died due to electric shock; and a sum of Rs.25,000/- towards expenses incurred and for mental agony suffered by the plaintiff together with interest at 18% per annum from the date of the suit till date of realisation.'

6. The written statement filed by the 1<sup>st</sup> defendant was adopted by the 2<sup>nd</sup> defendant by filing a memo. The defence of the 1<sup>st</sup> defendant, in brief, is this: 'The material allegations in the plaint are false. The plaintiff has not come to the Court with clean hands. The plaintiff has suppressed the material facts. The son of the plaintiff has not died either due to the mistake or negligence of the defendants. On the day of the accident, there was heavy blowing of wind and gale. Hence, 11 KV electric wire snapped and fell on the ground. The deceased and two others, who were going on bicycles carelessly and in a rash & negligent manner, met with the accident. There was no fault of the defendants, their agents, employees and workers. The said accident took place only due to

the mistake and negligent act of the deceased and by the Act of God. Immediately after coming to know of the incident, the defendants and their men rushed to the spot and restored the normalcy by taking necessary steps. The deceased was a minor by the time of the incident and as such he is not at all a bread winner of the family. The defendants have not promised to pay any compensation to the plaintiff towards the death of her son. The defendants are not liable to pay any such compensation as there was no fault on their part. In fact, an amount of Rs.5,000/- was paid to the plaintiff as exgratia on humanitarian grounds. After receiving the legal notice, the defendants called the plaintiff and convinced her that they are not liable to pay any amount. The plaintiff agreed not to claim any amount; however, on the ill advice of others, she has filed the suit to cause wrongful loss to the Electricity department. There was no fault in the services of the defendants and their men. There was neither negligence nor carelessness on the part of the defendants and their men. The plaintiff is not entitled to any compensation. The Court fee paid by the plaintiff is insufficient. The suit is not maintainable and it is time barred. The suit may be dismissed with costs.'

7. Having regard to the above pleadings, the trial court framed the following issues for trial.

1. Whether deceased Bikshapati was died of electric shock of live wire 11 KV due to mistake and negligence of the defendants and their men?
2. Whether the defendants are liable to pay compensation to the plaintiff?
3. Whether Court fee paid is correct?
4. Whether suit is time barred?
5. Whether the plaintiff is the guardian and legal heir of the deceased? If so which of the defendants is liable to pay compensation, at what quantum.
6. To what relief?

[Reproduced verbatim]

8. At trial, the plaintiff and her supporting witnesses were examined as PWs1 to 3 and exhibits A1 to A5 were marked on her side. On behalf of the defendants, DW1 was examined. However, no documents were marked on the side of the defendants.

9. The trial Court, on merits and by the judgment impugned in this appeal decreed the suit with costs. The operative portion of the judgment of the trial Court reads verbatim as under:

a) The plaintiff is entitled to receive the compensation at Rs.1,40,000/- by way of damages for loss of life of her deceased son due to unnatural death.

b) The plaintiff is also entitled to receive the compensation at Rs.25,000/- towards her mental agony due to unnatural death of her son.

c) The plaintiff is also entitled to 12% interest per annum from date of plaint till date of realisation.

d) That the defendants are directed to deposit the amount of Rs.1,65,000/- within three months from the date of this order.

Aggrieved thereof, the defendants preferred this appeal.

10. Learned counsel for the defendants would contend as follows: - 'The trial Court ought to have considered the fact that as per the statute the compensation should be assessed only based on the 'no fault liability' and not as per the claim raised by the plaintiff in the suit. The trial court erred in appreciating the fact that there was no negligence on the part of the defendants and that there is no evidence showing the same. The trial court ought to have considered the fact that the deceased person was a minor at the time of accident. The trial Court ought to have noted that the age factor that has to be taken into consideration for computing the compensation is the age of the surviving dependant i.e., the mother, and that her age is about 50 years. The trial court ought to have considered the fact that there is no iota of evidence to prove the age and income of the deceased. The trial court ought to have

considered that there can only be compensation for the loss of life and no other damages would be awarded in respect of any pain and suffering or mental agony. The trial Court failed to take into consideration the fact that the compensation should include the exgratia paid by the defendants; the exgratia of Rs.5,000/- paid by the defendants should have been deducted while passing the decree. The trial Court failed to appreciate that the negligence of the appellants was not proved beyond doubt. The trial Court ought to have seen that the incident is a result of 'Act of God' and that the incident would not have occurred but for the heavy blowing winds and gale on that day. When the weather is unfriendly, the deceased ought not to have proceeded on his cycle by risking his life. If at all there was negligence on the part of the defendants, the trial Court ought to have considered the fact that there is also contributory negligence on the part of the deceased and ought to have taken into consideration the said aspect while assessing the compensation, if any, payable to the plaintiff. The trial Court, without any basis or proof, awarded compensation, which is excessive, exorbitant and irrational; the same is not in accordance with the statute. The trial Court ought not to have awarded interest at 12% per annum simple on the compensation awarded. Hence, the judgment and decree of the trial Court are liable to be set aside; and, the compensation may be re-fixed according to the facts and the statute in force.'

11. Learned counsel for the plaintiff while supporting the decree and judgment of the trial Court contended as follows: - "The deceased, who is the sole bread earner of the family, died. His mother, who is a dependant upon him, suffered hardship and mental agony and was left to face starvation. The compensation claimed is a meagre amount. By any standards the compensation

of Rs.1,65,000/- awarded is not just and reasonable or sufficient. However, the plaintiff has not preferred any appeal or cross appeal for upward revision of the compensation. Hence, the compensation amount and interest awarded do not warrant any interference. Presently, as per the information furnished to the plaintiff, the department is paying an amount of Rs.5,00,000/- to the legal heirs of the persons dying due to electrocution. The defence raised is false and *mala fide* and is not established by adducing the required standard of evidence. In the present facts of the case, the principle enshrined in the doctrines '*res ipsa loquitur*' and '*strict liability*' would apply and the burden is on the defendants. The defendants failed to discharge the burden, which is upon them. The trial Court considered the facts correctly and the evidence in proper perspective and decreed the suit. The well reasoned findings and well considered judgment of the trial Court do not warrant any interference in view of the settled legal position in the decisions in **Motukuri Bheemavva and others v. APSEB, Vidyut Soudha Bhavan, Somajiguda, Hyderabad<sup>1</sup>**; **The Chairman APSEB, v. J. Vittal Swamy (died) and others<sup>2</sup>**; and **M.P.Electricity Board v. Shaik Kumari and others<sup>3</sup>**. Hence, the appeal is liable to be dismissed being devoid of merit.'

12. I have given earnest consideration to the facts and submissions.

13. From the pleadings, evidence brought on record and the contentions, it is apparent that the deceased met with untimely death due to electrocution, that is, due to the falling of a snapped live 11 KV electric wire upon him while going on a bicycle. The plaintiff relies upon the principle of '*strict liability*' and

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<sup>1</sup> 1997(6) ALD 217

<sup>2</sup> 2017 (1) ALT 293

<sup>3</sup> (2002) 2 SCC 162

the principle enshrined in the doctrine of '*res ipsa loquitur*' and *inter alia* contends that the initial onus of proof is on the defendants and that the defendants failed to discharge the said onus of proof and that in view of the said principles, the plaintiff is entitled to the compensation claimed and that in the facts and circumstances of the case and the legal position obtaining, the decree and judgment of the trial Court are sustainable and that the appeal of the defendants is liable for dismissal being devoid of merit. Per contra, the defendants contend that there is no negligence on their part and that on the day of the incident, there was a gale and blowing of heavy winds and that for that reason the electric wire snapped and fell on the deceased and others, who were negligently and carelessly riding their bicycles, and that the incident was due to the 'Act of God' and that in any view of the matter, the deceased, who proceeded on a bicycle on a windy day, contributed to the incident/accident and hence, the incident resulting in the death of the deceased had occurred due to the contributory negligence of the deceased as well.

14.1 Dealing first with the principle of '*strict liability*', it is to be noted that it is undisputed that the defendants are carrying out generation and transmission of electricity and that the said activity is an inherently hazardous and risky activity which endangers human lives. In such circumstances, the defendants' activity would be governed by the principle of '*strict liability*' enunciated in the celebrated case of **Rylands v. Fletcher**<sup>4</sup> wherein Blackburn, J, observed thus:

'The true rule of law is that the person, who for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is *prima facie* answerable for all the damage which is the natural consequence of its escape.'

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<sup>4</sup> (1868) 3 HL 330

This rule of '*strict liability*' gained recognition in India and this principle is quoted with approval in a legion of decisions. (See: ***Charanlal Sahu v. Union of India*** [(1990)1 SCC 613]; ***Gujarat SRTC v. Ramanbhai Prabhatbhai*** [(1987) 3 SCC 234]; and ***Koushnuma Begum v. New India Assurance Co.Ltd.***, [(2001) 2 SCC 9].

In a leading case of ***Scott v. London and St.Katherine Docks***<sup>5</sup>, it was observed as under: -

'Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.'

In ***M.C.Mehta v. Union of India***<sup>6</sup>, the Supreme Court has gone even beyond the rule of '*strict liability*' and held as follows:

'Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on anyone 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 v. Fletcher*.'

14.2 In the present case, the defendants are making an endeavour to rely on the exception to the rule of '*strict liability*' by submitting that the incident is due to an 'Act of God'. 'Act of God' or 'Vis Major' can be invoked in respect of acts beyond human control and contemplation caused due to superior natural forces. Thus, the phrase 'Act of God' can be defined as an event which is beyond the control of any human agency. Such acts happen exclusively due to natural reasons and cannot be prevented even while exercising caution and

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<sup>5</sup> (1865) 3 H & C 596

<sup>6</sup> (1987) 1 SCC 395

foresight. The defendants can escape from liability if the incident like the present incident occasioned because of some unforeseen and natural event which could not have been controlled in any manner. However, the natural events like gale and heavy blowing winds are not uncommon. Therefore, foreseeing such natural events, the defendants are expected to lay and maintain the electrical lines in such a way that such snapping of live wires do not occur during such natural events. Further, during occurrences like gale and blowing of heavy winds, the defendants are expected to shut down the supply to avoid any untoward incident.

14.3 The defence is that due to gale and blowing of heavy winds the live wire snapped and fell on the cyclist/the deceased and that there was no negligence on the part of the defendants and that the falling of the live wire on that day is due to an 'Act of God'. No suggestions in line with the defence are put to PW1. However, PW1 stated that on that day the sky was cloudy and it was winter season. DW1, who was the then Assistant Engineer, deposed that 11 KV conductor snapped and fell due to gale and wind and that three persons who were going on their cycles came into contact with live wire and died on the spot and that the break down and falling of the 11 KV wire on that day was only due to heavy gale and wind and that the season is not a rainy season. He further deposed that after knowing about the breakdown of the line, he deputed his staff and that the lineman and the helper restored normalcy. It is not in evidence that on that day any other similar incidents of snapping of the wire or falling of electrical poles had happened in that vicinity on account of the inclement weather conditions. Therefore, this incident appears to be a stray incident. It is for the defendants to plead and establish that the wires were

properly laid and are periodically attended to and are being maintained to avoid any such untoward incidents. No records are produced and no evidence is brought on record by the defendants to show that the defendants maintained the lines in good and safe conditions and that they carried out periodical inspections of the lines and have taken safety precautions to see that the roads over which the lines are laid are safe for the users. In the absence of such evidence and in view of the principle of '*strict liability*' and the principle enshrined in the doctrine of '*res ipsa loquitur*', it follows that the defendants are liable to pay the compensation. In the opinion of this Court, in case the electrical wire snaps and falls, unless rebutted, an inference that there has been carelessness and negligence on the part of the authority, which has the responsibility to maintain it, is irresistible. In this context, it is profitable to refer to the decision in **M.P. Electricity Board** (3 supra). The facts in this cited case are as follows: - 'A live wire got snapped and fell on the public road which was partially inundated with rain water; not noticing the same a cyclist rode over the wire and the wire twitched and snatched him; he was instantaneously electrocuted; a claim of damages made by his dependants was resisted by the State Electricity Board on the ground that the electrocution was due to clandestine pilferage of electricity committed by a stranger who unauthorisedly siphoned the electric energy from the supply line.' In this backdrop, while confirming the directions of the High Court to the Board to pay the compensation of Rs.4.34 lakhs, the Supreme Court noted in that case that the Board made an endeavour to rely on the exception to the rule of strict liability viz., 'act of a stranger' and held that the said exception is not available to the Board as the act attributed to the stranger should reasonably have been anticipated or at any rate its consequences should have been prevented by the

appellant Board. The Supreme Court also quoted with approval the findings of the Supreme Court in the decision in M.C. Mehta (supra). The said findings are already referred to supra. In the instant case, the risk involved in the operation undertaken by the defendants was so great that a high degree of care was expected of them and they ought to have anticipated the possibility of snapping of live wire on account of gale and heavy winds and ought to have taken necessary precautions but they failed to do so. Therefore, the defendants are not entitled to be absolved from liability on the plea of 'Act of God'. Be that as it may.

14.4 Dealing with the principle enshrined in the doctrine of '*res ipsa loquitur*' and the contention that the initial onus of proof is on the defendants and that the defence is untenable in view of the principle of '*strict liability*', it is necessary to refer to the decision of this Court in **Motukuri Bheemavva's case** (1 supra). The facts and the factual finding in the above cited case are as follows: 'The deceased died due to electrocution by coming into contact with a snapped live wire, which is lying on the ground; and, his death occurred while he was riding a bicycle. Therefore, his wife, minor son and mother made a claim for compensation. The defendants were sought to be made liable on account of negligence and failure to take reasonable precautions like provision of wire mesh to prevent the snapped wire from falling on the ground, automatic tripping of power supply in the event of wire snapping, lack of proper maintenance and regular checking to prevent wires from snapping due to poor stringing or ageing and failure to post a helper in the Village etcetera. However, apart from other contentions, the defendants pleaded that the wire snapped due to heavy rain and gale during the night, i.e., due to *vis major*, but,

not on account of any negligence on the part of the defendants. It was further pleaded in the defence that according to Electricity Rules no wire mesh was required to be provided over a cart-track and that there was no facility for automatic tripping in case of low tension lines and that a helper was posted in the village and that he did not receive intimation about snapping of the electric wire. A plea of contributory negligence was also raised stating that the deceased went near the fence and came into contact with the live wire. On facts, the Court found that the deceased must have involuntarily come into contact with the live wire while passing on the way and that no contributory negligence could be attributed to him.' In this backdrop, this Court having referred to the decisions of various other High Courts & of the Supreme Court and the Rule of Strict liability laid down in the decision in Ryland v. Fletcher and also a relevant passage in Hallsbury's Laws of England volume 34, held in paragraph 13 of the cited judgment, as follows: 'It is thus clear from the decided cases that the burden of proof in a case of this nature rests on the defendant to prove that there was no negligence on its part but not on the plaintiff to prove negligence.' The facts of the cited case are almost akin to the case on hand and the ratio in the cited decision squarely apply to the facts of the instant case.

15. For the afore-stated reasons, this Court finds that the defences advanced by the defendants are of no avail and that the contentions of the defendants that they are not liable to pay the compensation are devoid of merit and are liable for rejection. The said contentions are accordingly rejected.

16. Dealing finally with the quantum of compensation and the rate of interest, it is to be noted that the trial Court awarded a total compensation of

Rs.1,65,000/- [Rs.1,40,000/- towards damages for loss of life of the deceased son of the plaintiff; and, Rs.25,000/- towards the mental agony suffered by the plaintiff] together with interest at 12% per annum from the date of the institution of the suit till date of realisation. By any standards that may be applied, the said compensation awarded to the mother of the deceased cannot be said to be high and excessive and on the other hand it is only a bare minimum amount of compensation. In that view of the matter, the contentions of the defendants that the exgratia amount of Rs.5,000/- has to be deducted from out of the compensation amount and that the interest awarded, is on the higher side and that the same requires to be reduced need no countenance, as deduction of the exgratia amount and reduction of interest would result in denying just, fair and reasonable compensation to the plaintiff.

17. In the result, the appeal suit is dismissed with costs. The appellants-defendants are given two months time from the date of receipt of a copy of this judgment to deposit into the trial Court the amount due under the decree. On such deposit the plaintiff is entitled to withdraw the entire compensation amount with interest and costs. On failure of the defendants to deposit the amount, the plaintiff is at liberty to proceed to recover the amounts due under the decree in accordance with the procedure established by law.

Miscellaneous petitions pending, if any, in this appeal shall also stand dismissed.

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**JUSTICE M. SEETHARAMA MURTI**

19.02.2018.

Note: LR copy to be marked.

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