

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.1150 OF 2013

JUDGMENT:

This Second Appeal is filed, by defendant Nos.1 to 3, under Section 100 of C.P.C., assailing the judgment and decree dated 09.11.2010 passed in A.S.No.41 of 2007 on the file of the Court of III Additional District Judge, Kurnool at Nandyal, wherein and whereby the judgment and decree dated 21.09.2006 passed in O.S.No.17 of 2003 on the file of the Court of the Additional Senior Civil Judge, Nandyal (Fast Track Court), decreeing the suit for Rs.2,45,000/- with interest at the rate of 9% per annum from the date of suit till the date of decree and thereafter at 6% per annum till the date of realisation against defendant Nos.1 to 3, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the second appeal, in nutshell, are as follows:

The plaintiffs are the legal representatives of late P.C.V.Subba Reddy, who died due to electrocution on 05.02.2000. Defendant No.4 engaged late P.C.V.Subba Reddy for the purpose of harvest of crop with the help of harvester. Late Subba Reddy while attending the harvesting work came in contact with sagging live wires, due to which, he sustained injuries due to electric shock. Immediately after the incident, Subba Reddy (for short, 'the deceased') was shifted to Government Hospital, Nandyal and from

thereto C.D.R.Hospital, Hyderabad, wherein he died while undergoing treatment. Hence, the suit is filed claiming damages of Rs.5,44,892-75 ps. By the time of death, the deceased was aged about 48 years and used to earn Rs.1,00,000/- per annum.

4. Defendant Nos.1 to 3 filed a written statement denying all the averments made in the plaint *inter alia* contending that there was no negligence on their part and hence, they are not liable to pay compensation. It is further contended that the deceased died due to his own negligence only.

5. Defendant No.5 filed a written statement denying all the averments made in the plaint *inter alia* contending that there is no cause of action to file the suit. Hence, the suit is liable to be dismissed. Defendant No.7 filed a written statement and the same was adopted by defendant Nos.6, 8 and 9. They pleaded ignorance about the accident.

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

1. Whether there is no cause of action against D-5 and if not he is added unnecessarily though he has no insurable interest?
2. Whether D-4 has informed D-5 about the death of the deceased and if so, he is liable for suit amount?
3. Whether D-5 is not liable to pay any amount as the deceased has no licence and died by driving the harvester without licence?
4. Whether the plaintiff filed this suit suppressing his negligence and if so, he is not entitled for damages?
5. To what relief?

7. Before the trial Court, on behalf of the plaintiffs, PWs.1 to 4 were examined and Exs.A.1 to A.8 were marked. On behalf of the

defendants, DWs.1 to 4 were examined and Ex.B.1 insurance policy was marked.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the deceased died of electrocution due to negligence on the part of defendant Nos.1 to 3; therefore, they are liable to pay an amount of Rs.2,45,000/- to the plaintiffs with interest thereon at the rate of 9% per annum from the date of suit till the date of decree and thereafter at 6% per annum till the date of realisation and consequently, decreed the suit. The trial Court dismissed the suit against defendant Nos.5 to 9.

9. Feeling aggrieved by the judgment and decree of the trial Court, defendant Nos.1 to 3 have preferred A.S.No.41 of 2007 on the file of the Court of III Additional District Judge, Kurnool at Nandyal. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the deceased died of electrocution due to negligence on the part of defendant Nos.1 to 3; therefore the plaintiffs are entitled to claim the damages from defendant Nos.1 to 3 and consequently, dismissed the appeal. Hence, defendant Nos.1 to 3 preferred the present second appeal.

10. Heard the learned counsel for the appellants and learned counsel for respondent Nos.1 to 4.

11. The question of law urged by the learned counsel for the appellant is as follows:

“Whether the findings recorded by the Courts below are perverse?”

12. In order to appreciate the contention of the learned counsel for the appellants, this Court is placing reliance on the judgment of the Hon'ble apex Court in **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, wherein while considering the scope of Section 100 of CPC, it was held at paragraph No.16 as follows:

“16. Thus, it is evident from the above that the right to appeal is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a court or authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance with the conditions mentioned in the provision that creates it. Therefore, the court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same. (Vide *Santosh Hazari v. Purshottam Tiwari*, (2001) 3 SCC 179; *Sarjas Rai v. Bakshi Inderjit Singh*, (2005) 1 SCC 598; *Manicka Poosali v. Anjalai Ammal*, (2005) 10 SCC 38; *Sugani v. Rameshwar Das*, (2006) 11 SCC 587; *Hero Vinoth v. Seshammal*, (2006) 5 SCC 545; *P. Chandrasekharan v. S. Kanakarajan*, (2007) 5 SCC 669; *Kashmir Singh v. Harnam Singh*, (2008) 12 SCC 796; *V. Ramaswamy v. Ramachandran*, (2009) 14 SCC 216 and *Bhag Singh v. Jaskirat Singh*, (2010) 2 SCC 250.)”

13. Let me consider the facts of the case on hand, in the light of the above legal principles.

14. The testimony of PWs.1 to 3 and DWs.1 to 4 clearly reveals that on the fateful day, defendant No.4 engaged the deceased to harvest the crop with the help of harvester. The testimony of PWs.1 to 4 clearly reveals that the deceased, while attending the harvesting work, came in contact with sagging live wires, due to which, he sustained injuries. Immediately after the incident, the

¹ (2010) 13 SCC 216

deceased was shifted to Government Hospital, Nandyal and from thereto C.D.R.Hospital, Hyderabad, wherein he died while undergoing treatment. The testimony of PW.4 coupled with Ex.A.4 clearly reveals that the deceased took treatment in C.D.R.Hospital, Hyderabad. As per the recitals of Ex.A.2-inquest report and Ex.A.3-post-mortem report, the deceased died due to electrocution.

15. It is the duty of the Electricity Officials to verify the electrical line periodically so as to avoid unfortunate incidents. As seen from the testimony of PWs.1 to 4, live wires were sagging below the normal height on the land of defendant No.4 for a long time. This fact was not being denied by DWs.1 to 4. When there is negligence on the part of the Electricity Department, the victims are entitled to claim damages. The oral and documentary evidence available on record clinchingly establishes that the deceased died of electrocution due to negligence on the part of defendant Nos.1 to 3. The first appellate Court is the fact finding final Court. This Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. I am fully endorsing with the findings recorded by the Courts below so far as the nature and cause of death of deceased and the negligence on the part of defendant Nos.1 to 3 are concerned.

16. The trial Court, after taking into consideration the oral testimony of PW.4 and Ex.A.4-medical bills, granted an amount of Rs.1,10,000/- towards medicines. The trial Court arrived at a conclusion that the deceased under any circumstances may earn Rs.10,000/- per annum. Taking into consideration the age of the

deceased, the trial Court has taken the multiplier as '11'. The trial Court assessed the loss of earnings as Rs.1,10,000/-. The trial Court also granted an amount of Rs.10,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.10,000/- towards pain and suffering.

The total amount awarded under various heads is as follows:

01.	Medical expenditure	Rs. 1,10,000/-
02.	Loss of earnings	Rs. 1,10,000/-
03.	Loss of consortium	Rs. 10,000/-
04.	Funeral expenses	Rs. 5,000/-
05.	Pain and suffering	Rs. 10,000/-
	Total:	Rs. 2,45,000/-

Viewed from any angle, the amount of compensation granted by the Courts below are not on higher side.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that there is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

18. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.11.2018
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