

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.1449 of 2018 (O&M)

Date of Decision: March 12, 2018

Municipal Corporation, Rohtak

---Appellant

Versus

Ganga Devi and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Vishal Garg, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

This is a regular second appeal against the judgment of the Courts below, whereby, the suit of the plaintiff-respondents has been decreed.

The plaintiffs had instituted the suit claiming damages from the defendants on account of the death by electrocution of Sandeep. The plaintiffs are the widow and minor son respectively of the deceased. Defendant No.1 is the State of Haryana. Defendants No.2 to 5 are the Uttar Haryana Bijli Vitran Nigam Limited (in short UHBVNL) and its functionaries. Defendant No.6 (appellant herein) is the Municipal Corporation Rohtak.

It was pleaded that the deceased Sandeep was a *rehri* hawker, who used to sell fruits and vegetables at Bhiwani Stand, Rohtak. He earned Rs.300/- to Rs.400/- per day and supported his family. The plaintiffs were wholly dependent upon him. On 26.08.2011 he was selling fruits and vegetables on his *rehri* alongwith one Rajesh son of Kitab Singh. He was to accompany his sister Neetu to PGIMS Rohtak so he left his *rehri* with

Rajesh and started for PGIMS Rohtak alongwith his distant grandmother Prema Devi and aunt Rekha. When he was crossing the road at Bhiwani Stand, Rohtak, from North to South at about 9.00/9.30 PM he passed through the passage between the electric pole and the iron railing fixed on the divider of the road at Bhiwani Stand, Rohtak. There was live electric current in the electric pole as well as in the iron railing because of which he suffered electric shock and fell down. He was immediately taken to PGIMS, Rohtak on a three-wheeler, driven by Jai Bhagwan. The doctors at PGIMS Rohtak declared him dead. His post mortem was conducted on 27.8.2011 and the doctors determined that his death was caused by electrocution.

Claiming that Sandeep had died due to the negligence and carelessness on the part of the defendants in letting a naked electric wire of high voltage touch the electric pole and iron railing, the suit was filed.

Defendants No.2 to 5 sought to disclaim their responsibility by stating that the electric pole and iron railing were installed by defendant no.6- MC, Rohtak. Their case was that they merely supplied electricity and were not concerned with the said pole and iron railing. Defendant No.6 pleaded that the passage adopted by the deceased was not a thoroughfare. The iron railings had been specifically fixed to prevent the general public from passing. It was claimed that the deceased lost his life due to his own fault.

On the basis of the evidence led by the parties, learned trial court concluded that it had been established that the deceased had died due to electrocution.

As per the post-mortem report, the cause of death in this case was recorded as electrocution. PW-2 Rekha wife of Zora Singh deposed that she was present at the time of occurrence. When the deceased was

passing through the passage between the electric pole and the iron railing fixed on the divider of the road at Bhiwani Stand, he suffered electric shock and fell down. He was taken to PGIMS Rohtak but was declared dead by the doctors. Her evidence could not be shattered in cross-examination. Moreover, in DDR No.25 dated 27.8.2011 the same sequence regarding the death of Sandeep was recorded.

The learned trial Court also noted that the defendants had nowhere pleaded that no current was passing through the electricity pole and the iron railings. The defence of the defendants that the deceased himself was at fault as the passage was not a thoroughfare was negated by the Court by holding that it was the duty of the defendants to maintain the street lights and electric poles properly. If the defendants were of the view that no person should cross the passage, they should have closed that passage by installing iron angles or by some other means. In any event, it was the responsibility of the defendants to maintain the electric poles/lines in proper manner and ensure that no naked electricity wire comes in contact with the iron poles. The doctrine of strict liability was held to be attracted in the case. It was held that the public authorities have a duty of care to the public to ensure that their installations are maintained in a manner that they do not cause any danger to life and property of the citizens. Accordingly, it was held that the death has been caused due to the negligence of the defendants.

In the absence of any definite proof regarding income of the deceased, the Court assessed his income at Rs.6000/- per month, the dependency of the plaintiffs was assessed at Rs.4000/- per month being 2/3rd of his income, a multiplier of 17 was applied, considering that the deceased was in the age group of 20 to 25 years. Compensation of Rs.8,16,000/- was awarded. The defendants were held liable to pay the same jointly and

severally.

The learned Appellate Court affirmed the findings of learned trial Court. The compensation was enhanced to Rs.9,41,000/- (816000+100000+25000) holding that the plaintiffs are also entitled to Rs.1,00,000/- as 'loss of consortium' and Rs.25,000/- as funeral expenses. However, considering the fact that the UHBVNL and the M.C., Rohtak were each trying to shift the liability to the other, learned lower appellate Court noticing the fact that the UHBVNL was the supplier of electricity in the area whereas the electricity supply was being regulated by the MC Rohtak within the municipal area, held them to be equally responsible for the distribution, control and management of the electricity to the inhabitants of the city. Holding them to be equally responsible, they were directed to make payment of half share each.

The present appeal has been filed by the M.C. Rohtak questioning the fastening of half of the liability on it.

Learned counsel for the appellant, however, has not been able to establish as to how the findings of negligence recorded by the courts below are perverse or not sustainable. He has further not been able to establish as to how the MC Rohtak can be held to be in no way liable. Though, the electric supply was being regulated by the UHBVNL but it has not been denied that the electric pole and the iron railings were installed and maintained by the MC Rohtak. It was equally its duty along with UHBVNL to ensure that the installations particularly the railing was safe and would not cause death on mere contact. There is no evidence that the public were warned by suitable notices against the dangers of contact with the railings. In these circumstances, there is no ground to interfere with the findings of learned lower appellate Court holding the appellant MC Rohtak to be responsible/liable to the extent of half share.

No question of law arises for consideration.

Accordingly, there is no merit in this regular second appeal and the same is dismissed.

12.03.2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No