

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

RSA No.4096 of 2017 (O&M)
Decided on:-April 19, 2018.

The Chairman-cum-Managing Director, Punjab State Transmission Corporation Limited, Patiala and others

.....Appellants.

Versus

Madan Lal (deceased) through his LRs.

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Vikas Chatrath, Advocate
for the appellants.

HARI PAL VERMA, J.

The appellant-defendants have filed the present regular second appeal against the judgment and decree dated 02.05.2017 passed by learned Additional District Judge, Rupnagar, whereby their appeal against the judgment and decree dated 31.08.2016 passed by learned Additional Civil Judge (Senior Division), Anandpur Sahib, was dismissed.

Briefly stated, the respondent-plaintiffs had filed a suit for compensation on account of death of Smt. Jito Devi wife of plaintiff Madan Lal (since deceased) and mother of plaintiffs Vinod Kumar and Ravi Kumar, the minor sons. Jito Devi had died on 29.04.2004 as she was electrocuted with the TLC electric wire of 220 KV hanging in the passage due to its breakage. She was got admitted in PGIMER, Chandigarh, where she remained admitted till her death on 29.05.2004.

It was pleaded by the respondent-plaintiffs that she was earning about Rs.4,000/- per month by doing labour work. Besides this, she used to do tailoring work as well as dairy farming and was earning about Rs.5,000/- per month. The plaintiffs suffered shock, mental agony, harassment and inconvenience due to negligence of the defendants. The plaintiffs spent about Rs.70,000/- on her treatment and Rs.30,000/- on the last rites. Hence, the suit.

In their joint written statements, the appellant-defendants raised preliminary objections that the suit is neither competent nor maintainable and the plaintiffs have not approached the Court with clean hands. On merits, it was pleaded that the story of the plaintiffs is not true. No TLC wire of 220 KV exists at the spot and as such, no question of falling of any 220 KV wire arose at all. In case it happens by chance, then the electricity supply in the wire will automatically be cut off and the question of any electrocution does not arise. The defendants had no knowledge about the alleged incident and they only came to know about it when they received summons from the Court. The remaining averments of the plaintiffs were denied and a prayer for dismissal of the suit was made.

The respondent-plaintiffs filed replication to the written statement reiterating the facts mentioned in the plaint. On the basis of pleadings of the parties, the civil Court formulated the following issues:

1. Whether plaintiffs are entitled to compensation, as prayed for? OPP
2. Whether suit of plaintiffs is not maintainable? OPD
3. Relief.

After considering the evidence produced on record by both the parties and hearing their rival contentions, suit of the plaintiffs was decreed by learned civil Court vide impugned judgment and decree dated 31.08.2016 and the plaintiffs were held entitled to total compensation of Rs.4,28,000/- in equal shares from the defendant Board.

Feeling aggrieved against the aforesaid judgment and decree dated 31.08.2016 passed by the civil Court, the appellant-defendants preferred an appeal before the lower appellate Court. But the appeal was also dismissed by learned Additional District Judge, Rupnagar vide judgment and decree dated 02.05.2017.

Still aggrieved, the appellant-defendants have filed the present regular second appeal.

Following substantial questions of law have been raised by the appellant-defendants:

- i. Whether judgment and decree passed by learned Courts below are unsustainable being example of non-application of mind?
- ii. Whether once plaintiff-respondents have failed to prove that any incident of electrocution had occurred due to the negligence of the appellants, suit filed by plaintiff deserves to be dismissed?
- iii. Whether suit filed by plaintiff-respondents is based on incorrect premises and allegations as levelled in the plaint are false and concocted?
- iv. Whether provisions of Motor Vehicles Act can be made applicable in simplicitor suit for compensation while assessing the compensation?
- v. Whether compensation awarded by learned Courts below is excessive and unsustainable in the eyes of law?

- vi. Whether remedy of civil suit for compensation was barred in view of provisions of the Electricity Act, 2003?

Learned counsel for the appellant-defendants has argued that the Courts below have committed a legal error while awarding compensation to the plaintiffs. As per the pleaded case of the plaintiffs, deceased Jito Devi remained admitted in PGIMER, Chandigarh for one month, but the plaintiffs did not make any complaint either before the police or other authorities alleging negligence on the part of the defendant-appellants that she suffered burn injuries due to electrocution. The bald statement made by deceased plaintiff Madan Lal before the Court that when he approached the police, he was advised to take care of deceased Jito Devi, is no ground to hold that the appellants are guilty of any negligence. The respondent-plaintiffs have failed to prove any incident and negligence on the part of the appellants. The Courts below still decreed the suit on the ground that as per the statement of doctor, the deceased was having 50% burn injury due to electrocution, but that cannot be the basis to form an opinion that the deceased had died due to electrocution unless it is proved on record that the deceased was caught in live electric wire due to negligence of the defendant-appellants at the given place. No such evidence has come on record that the appellants are guilty of negligence. The Courts below have assessed the amount of compensation as per the provisions of the Motor Vehicles Act, 1988 by relying upon the judgment of Hon'ble Supreme Court in *Smt. Sarla Verma and others Versus Delhi Transport Corporation and another* 2009(3) RCR (Civil) 77. However, the Motor Vehicles Act, 1988 is a special statute and cannot be made applicable in the

present case. Even otherwise, the suit filed by the plaintiff was barred under the Electricity Act.

I have heard learned counsel for the appellants.

There is a concurrent finding of fact recorded by the Courts below that on 28.04.2004 plaintiff Madan Lal (since deceased) along with his wife Jito Devi and one Smt. Nitu and Singh Ram were going for harvesting the wheat crop at Bunga Sahib, Tehsil Anandpur Sahib, District Ropar. They stayed at Bunga Sahib in the evening of 28.04.2004 and on the next day i.e. 29.04.2004 at about 06.30 A.M., when they reached in the fields of one Kabal Singh and deceased Jito Devi was going ahead of them, there was one TLC wire of 220 KV existing in the passage which was hanging due to its breakage because of the negligence of the defendants. The tower of said wire was existing on the spot and the wire was also hanging from the tower and was touching the fields of Kabal Singh. As a result thereof, Jito Devi was electrocuted. She fell unconscious and was taken to Civil Dispensary at Bharatgarh on 29.04.2004 itself. Thereafter, considering the seriousness of burns, she was referred to PGIMER, Chandigarh. She remained admitted there till her death i.e. 29.05.2004. A DDR No.17 dated 30.04.2004 was also recorded by the police regarding this incident. The copy of post-mortem report has been proved on record as Ex.PW6/A.

The civil Court has assessed the income of deceased as Rs.3,000/- per month as she was a labourer. She was about 28 years of age and had died because of electrocution. The electricity wire was lying on the ground as the same was disconnected from the pole/tower due to bad weather

and blowing of fast winds during previous night. The deceased came in contact with live wire and was electrocuted.

The plea of the appellants that the death of Jito Devi was an act of God was rightly disbelieved by the Courts below, rather, it was a total negligence on the part of the appellant-Electricity Department. They were duty bound to maintain the live electricity wires properly irrespective of the bad weather. The impugned judgments and decrees passed by the Courts below are based upon the law laid down by Hon'ble Supreme Court in ***M.P. Electricity Board Versus Shail Kumari 2002 AIR (SC) 551***, wherein it has been held that live wires were found snapped and fell on road due to illegal act of stranger for pilferage purposes and deceased came in contact with that live wire and died of electrocution. In such circumstances, the Electricity Board was held liable to pay the amount of compensation even though there was no negligence on its part.

There is no illegality in assessing the quantum of compensation by the Courts below. Having recourse to the Motor Vehicles Act, 1988 and the law laid down by Hon'ble Supreme Court in ***Smt. Sarla Verma's case (supra)***, the Courts below have rightly applied the multiplier of '17' as the deceased was about 28 years of age. Her monthly income has rightly been assessed as Rs.3,000/- per month and annual income as Rs.36,000/-. By applying the multiplier of '17', the amount comes to Rs.6,12,000/-. Out of this, 1/3rd deduction has been made on account of personal expenses of deceased Jito Devi and the remaining income comes to Rs.4,08,000/-. The respondent-plaintiffs were held entitled to get Rs.15,000/- for loss of estate

and Rs.5,000/- for funeral expenses. Thus, a total compensation of Rs.4,28,000/- was rightly assessed by the Courts below.

Therefore, there is no illegality in the concurrent finding of facts recorded by the Courts below.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 31.08.2016 passed by the civil Court as well as the judgment and decree dated 02.05.2017 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

Since the main appeal has been dismissed, pending civil miscellaneous application, if any, also stands dismissed.

April 19, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No