

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 633 of 2000**

1. (a) Sushil Kumar Jain S/o Jethamal, Aged About 38 Years
- (b) Smt. Rajshri Jain D/o Jethamal, Aged About 35 Years
- (c) Surendra Kumar S/o Jethamal, Aged About 53 Years
- (d) Narendra Kumar S/o Jethamal, Aged About 21 Years
- (e) Smt. Madhu Jain D/o Jethamal, Aged About 29 Years
- (f) Durga Jain D/o Jethamal, Aged About 26 Years
- (g) Ku. Mumta Jain D/o Jethamal, Aged About 25 Years
- (h) Rajesh S/o Jethamal, Aged About 23 Years
- (i) Smt. Jethibai W/o Jethamal, Aged About 55 Years

All are R/o Village Bistrampur, Police Station Jainagar, Tehsil Surajpur, District Surguja Madhya Pradesh Now ChhattisgarhDefendents

---- Appellants

Versus

1. Rajkumari Died Through Lrs.
 - 1A. Subhash Sao S/o Late Daya Ram Sao, Aged About 50 Years
 - 1B. Shyamlal Sao S/o Late Daya Ram Sao, Aged About 47 Years
 - 1C. Shankarlal S/o Late Daya Ram Sao, Aged About 45 Years
 - 1D. Shivkaumar S/o Late Daya Ram Sao, Aged About 42 Years

All residents of Village Garhulakia, P. S. And Tahsil Raigarh, District Raigarh Chhattisgarh

2. M.P. Electricity Board, through Chairman, M.P.E.B. Jabalpur.

---- Respondents

For Appellant : Shri Sushil Dubey, Advocate
 No representation is made on behalf of the respondents, despite service of notice.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/01/2019**

1. Heard.
2. The present appeal is against the judgment and decree dated 03.11.1999 passed in civil suit No.64-B/99 by the Court of District Judge, Surguja. A suit was filed by Rajkumari w/o Dayaram, the mother of the deceased Sashiram. As per the plaint averments, in function of the marriage of daughter of the defendant namely Jethamal (since deceased) Sashiram was engaged @ 25/- rupees as a labour on 14.02.1989. At the instructions of Jethamal, the deceased was working on the roof top and was laying Shamiyana for the purpose of marriage. At that time all of a sudden storm came and 1100 K.W. line which was passing near by to the house of Jethamal fell to the body of Sashiram, whereby he sustained severe burn injury, he was admitted to the hospital and thereafter succumbed to the injury. The plaintiff alleged that because of the negligence of electricity department and Jethamal, the accident occurred.
3. The defendant Jethamal (since deceased) denied the plaint averments. It was stated that the entire contract for the marriage ceremony was given on contract to one Sharma Tent House, Raigarh and the owner of the said Sharma Tent House namely Upendra Sharma along with four labourers came on 13.02.1989 wherein the deceased Sashiram was working with the Tent House. He stated that when the storm came Sashiram, the deceased, went to the roof and by crossing the fencing wall tried to save the Pandal from storm, wherein he came in contact with the high voltage electric wire and thereby died. As such, the

defendant was not responsible for the accident.

4. The electricity board contended that the defendant Jethamal had constructed the house by ignoring the instructions and objections of the electricity department and the house was constructed very near the line. It was further stated that earlier to it also while the house was constructed, since it was near the high voltage line, one labour Raganbai died as she was electrocuted as such the criminal case bearing No.126/87 under Section 304 IPC was pending. It was further stated that when the storm came, the tent was flying away as such in order to control the tent when the deceased went on the roof of the house, he could not control himself and fell over the 33 KV line, which was only three feet away from the house of Jethamal, therefore, respondent No.2 electricity department was not responsible for any accident occurred and the entire responsibility was that of the deceased and defendant No.1.
5. On the basis of the pleading of the parties, learned Court below framed 13 issues and decreed the suit for Rs.57600/-. The trial Court held that because of the fact that defendant No.1 Jethamal (since deceased) had constructed the house against the rules nearer to the high tension line, as such the liability cannot be avoided, therefore, the decree was passed. Being aggrieved by such order, the present appeal is filed by defendant No.1, the house owner, Jethamal (since deceased) represented by the legal heirs.
6. It is contended that the order of the Court below is without evidence and it was because of the storm, the accident occurred for which the appellant cannot be held liable. It is further stated that under the circumstances since the death has caused because of the electrocution, which was not within the control of the present appellants, the appellants cannot be held liable. It is further submitted

that the trial Court failed to appreciate the facts in proper perspective and thereby the wrong finding has arrived at.

7. Despite repeated pass overs and after the matter rolled over in the list, no one turned up on behalf of the respondents, as such the case is heard on merits.
8. Perusal of the order would show that the liability was fixed joint and several and it was divided into half i.e. 28,800/- rupees to be paid by each i.e. defendant No.1 Jethamal (since deceased) and the electricity board. Electricity Board has not come up in appeal it is the defendant No.1 Jethamal (since deceased) represented through his legal heirs who has filed this appeal.
9. Rajkumari (PW-1), the mother of the deceased Sashiram, stated that the deceased was residing with her and they were dependent on her son Sashiram. She further stated that while the deceased was working in the house of defendant No.1 Jethamal, the owner of the house, he came into contact with the high tension wire and the accident happened. She further stated that Jethamal hired the services of Sashiram and took him to Vishrampur along with other labours @ 25 rupees per day. In her cross-examination the suggestion given to her that the deceased was engaged by the Sharma Tent House is completely denied and even the existence of Sharma Tent House has been denied.
10. Sushil Kumar Jain (DW-1), who was examined on behalf of the defendant, has admitted that the death of Sashiram has occurred due to electrocution at the relevant time as the storm came and electricity line fell on him. With respect to the fact that the deceased as was stated to be engaged by Sharma Tent House, no document or any agreement or any slip was placed on record to show that

such engagement of deceased was made by Sharma Tent House. The death of the deceased by the electrocution is not denied and the electricity board on whom the half of the liability was fastened to the extent of Rs.28,800/- is not before this Court in appeal. Therefore, the strict liability of the electricity board has been accepted by the electricity board. It is only the part of the liability which is fastened on the owner of the house wherein the deceased sustained the injuries has to be looked into that whether the liability was correctly fastened or not ?

11. In the statement of Sushil Kumar Jain (DW-1) S/o Late Jethamal in para 6 of the cross-examination stated that the house was constructed in the year 1986 and before the house was constructed the high tension line was already existing and in between the house and the electric line only 4 – 5 feet distance exists and the line passes over/near the roof of the house.
12. Rule 80 & 82 of the Indian Electricity Rules, 1956 (hereinafter referred to as 'the Rules, 1956') covers this proposition as to how many clearances should be there in between high and extra- high voltage line, which are reproduced hereunder:-

“80. Clearances from buildings of high and extra-high voltage lines-

(1) Where a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than-

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| (a) for high voltage lines upto
and including 33,000 volts | 3.7 meters |
| (b) for extra- high voltage lines | 3.7 meters plus
0.30 metre for
every additional
33,000 volts or |

part thereof.

(2) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than-

(a) for high voltage lines upto 1.2 meters
and including 11,000 volts

(b) For high voltage lines above 2.0 meters
11,000 volts upto and including
33,000 volts

(c) for extra-high voltage lines 2.0 meters plus
0.3 metre for
every additional
33,000 volts for
part thereof.

82. Erection of or alternation to buildings, structures, flood banks and elevation of roads- (1) If at any time subsequent to the erection of an overhead line (whether covered with insulating material or bare), any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure of flood bank or road, any permanent or temporary addition or alternation, he and the contractor whom he employs to carry out the erection, addition or alteration, shall, if such work, building, structure, flood bank, road or additions and alterations, thereto, would, during or after the construction result in contravention of any of the provisions of rule 77, 79 or 80, give notice in writing of his intention to the supplier and to the Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank road, any addition or alteration and scaffolding required during the construction.

(2) (a) On receipt of the notice referred to in sub-rule (1) or otherwise, the supplier shall examine whether the line under reference was lawfully laid and whether the person was liable to pay the cost of alteration and if so, send a notice without undue delay, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line and require him to deposit, within 30 days of the receipt of the notice with the supplier, the amount of the estimated cost.

(b) If the person referred to in sub-rule (1) disputes the supplier's estimated cost of alteration of the overhead line or even the responsibility to pay such cost, the dispute may be referred to the Inspector by either of the parties whereupon the same shall be decided by the Inspector.

(3) No work upon such building, structure, flood bank, road and addition or alternation thereto shall be commenced or continued until the Inspector has certified that the provisions of rule 77, 79 or 80 are not likely to be contravened either during or after the aforesaid construction:

Provided that the Inspector may, if he is satisfied that the overhead line has been so guarded as to secure the protection of persons or property from injury, or risk of injury, permit the work to be executed prior to the alteration of the overhead line or, in the case of temporary addition or alteration, without alteration of the overhead line.

(4) On receipt of the deposit, the supplier shall after the overhead line within one month of the date of deposit or within such longer period as the Inspector may allow and ensure that it shall not contravene the provisions of rule 77, 79 or 80 either during or after such construction.

(5) In the absence of an agreement to the contrary between the parties concerned, the cost of such alteration of the overhead line laid down shall be estimated on the following basis, namely: -

(a) the cost of additional material used on the alteration giving due credit for the depreciated cost of the material which would be available from the existing line;

(b) the wages of labour employed in effecting the alteration;

(c) supervision charges to the extent of 15 per cent of the wages mentioned in clause (b); and

(d) any charges incurred by the supplier in complying with the provisions of section 16 of the Act in respect of such alterations.

(6) Where the estimated cost of the alteration of the overhead line is not deposited, the supplier shall be considered as an aggrieved party for the purpose of this rule.

13. As per the evidence of Sushil Kumar Jain (DW-1), the line since was already existing prior to the construction of the house, therefore, the construction of the house itself was not according to the rules and the clearances in between the house and high voltage line as per the electricity board of 3.7 meters, did not existed as the electricity line according to the board was of 33000 volts. The electricity board stated that the line which was passing through was a high

voltage line of 33 KV, therefore, if the said construction was made by not following the Rule 80 of the Rules, 1956 and the distance was not maintained, the construction of the house itself was not according to the rule which mandates that certain distance was to be maintained. If the same is not done in such case in the event of happening of untoward incident the owner of house cannot avoid the liability for damages. It is an admitted fact that the accident had occurred in the house while the tent was being erected for the marriage, therefore, the liability to the extent of 50% as has been fastened on the present appellants cannot be faulted as it cannot be held that the appellant was completely ignorant of the fact have proceeded and abided by the law. Under the circumstances, after entire scrutiny of the evidence, I am of the opinion that the order passed by the Court below do not call for any interference by this Court. The appeal has no merit, it is accordingly dismissed. It is further directed that the appellant shall also be liable to pay the cost of this appeal to the respondents.

Sd/-

Goutam Bhaduri
Judge

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