

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 152 of 2015**

1. Assistant Engineer, Chhattisgarh State Electricity Board (Now Chhattisgarh State Power Distribution Company Ltd.) Rural Area, District- Bastar, Chhattisgarh
2. Chairman Chhattisgarh State Electricity Board, (Now Chhattisgarh State Power Distribution Company Ltd.) Raipur, Chhattisgarh

---- Appellants**Versus**

1. Aashmati W/o Devdas Aged About 40 Years Caste Bhatra, R/o Village Koliyapara, Kalcha, Post- Kalcha District- Bastar, Chhattisgarh
2. Kamlochan S/o Sukru, Aged About 40 Years, Caste Bhatra, R/o Village Koliyapara Kalcha, Tah.- Jagdalpur, District- Bastar, Chhattisgarh
3. Sarpanch Gram Panchayat-Kalcha, Tehsil Jagdalpur, District- Bastar, Chhattisgarh
4. State Of Chhattisgarh, Through Collector, Bastar At Jagdalpur, Chhattisgarh,

---- Respondents

For Appellants	Shri Abhishek Sinha, Advocate
For Respondent No.1	Shri Rakesh Thakur, Advocate
For Respondent No.2	Shri Vikas Shrivastava, Advocate
For Respondent/State	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****By****Prashant Kumar Mishra, J.**

07/02/2019

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred by the defendants No.3 & 5 questioning the legality and validity of the impugned judgment and decree whereby the trial Court has awarded compensation of Rs.7,70,000/- with interest at the rate of 9% per annum from 16-11-2005 till realization.
2. Plaintiff Aashmati preferred the suit claiming compensation of Rs.1,27,10,000/- with interest at the rate of 18% on the pleading that her husband Devdas and daughter Ku. Sonadel died due to electrocution on 24-9-2005 as they came into contact with illegally erected electric wire by the defendant No.1 Kamlochan through a tamarind tree. At the time of death Ku. Sonadel was aged about 12 years whereas Devdas was 40 years old. On the date of incident, deceased Ku. Sonadel had climbed over the tree for collecting tamarind and came into contact with live electric wire and due to electrocution she stuck up to the electric wire and fell down and eventually succumbed to death on the spot. Her father Devdas rushed to the spot and he also came into contact with the live electric wire and died spontaneously.
3. According to the plaintiff, both the deceased were not aware of the live electric wire erected by the defendant No.1 illegally without seeking any permission from the Electricity Department.

4. The suit was contested by the defendant No.2 Sarpanch, defendant No.3 Assistant Engineer, CSEB, Rural Area, Bastar and the defendant No.5 Chairman, CSEB, Raipur.
5. Defendant No.1 Kamlochan, who had illegally erected the electric wire over the tamarind tree, and the defendant No.4 State of Chhattisgarh, remained *ex parte*.
6. While the defendant No.2 Sarpanch, Gram Panchayat, Kaloha denied any liability, the defendants No.3 & 5 raised the plea of obtaining illegally electric connection by the defendant No.1 without their knowledge, therefore, they shifted the liability only on the defendant No.1. These defendants admitted to a criminal prosecution lodged by the State against the defendant No.1 bearing special case No.2/2006 before the Court of Special Judge (Electricity), Jagdalpur. They also pleaded negligence on the part of the deceased themselves.
7. On the basis of evidence on record, the trial Court found that both the deceased died due to electrocution and awarded compensation of Rs.7,70,000/- to the plaintiff.
8. Assailing the judgment and the findings, learned counsel for the appellants, would mainly argue that doctrine of strict liability is not applicable in a case where the death due to electrocution was a result of '**an act of stranger**'. According to the appellants, the defendant No.1 having taken illegal electric connection by hooking he alone was negligent and responsible for the tragedy and the Electricity Board being not aware of such illegally

erecting electric wire they are not liable for ‘**an act of stranger**’.

9. Appellants would place reliance upon the decision of the Supreme Court rendered in **W.B. State Electricity Board and Others v Sachin Banerjee and Others**¹ and tried to distinguish the judgment rendered in **M.P. Electricity Board v Shail Kumar and Others**².
10. Per contra, learned counsel appearing for the respondent No.1/plaintiff would support the impugned judgment and decree.
11. Since the impugned judgment and decree rests on the law laid down by the Supreme Court in **M.P. Electricity Board** (supra) in which the judgment rendered in **W.B. State Electricity Board** (supra), relied by the appellants, has also been referred, we thought it proper to straightaway refer to the judgment rather than dealing the entire facts and evidence. We think so because both the parties have not disputed that the death of deceased has occurred due to electrocution through the illegally erected wire by the defendant No.1 passing through the tamarind tree.
12. In **M.P. Electricity Board** (supra) a similar argument with reference to ‘**an act of stranger**’ has been repelled by the Supreme Court in the following manner in paras 13 to 15 :

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any

1 (1999) 9 SCC 21

2 AIR 2002 SC 551

rate its consequences should have been prevented by the appellant-Board. In *Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited* {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.

14. The Privy Council has observed in *Quebec Railway, Light Heat and Power Company Limited v. Vandry and Ors.* {1920 Law Reports Appeal Cases 662} that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found it sway through the low tension cable into the premise of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

15. In *W.B. State Electricity Board v. Sachin Banerjee* (1999 (9) SCC 21) the Electricity Board adopted a defence that electric lines were illegally hooked for pilferage purposes. This Court said that the Board cannot be held to be negligent on the said fact situation but the question of strict liability was not taken up in that case.

13. In view of the above, we have no hesitation in holding that the appellants have rightly been held liable under the principle of strict liability to pay compensation to the plaintiff. There being no appeal by the defendant No.1 against the impugned judgment and

decree, therefore, as against him the impugned judgment and decree has also become final. Thus, upon payment of entire amount of compensation the appellants/defendants No.3 & 5 would be at liberty to recover the decretal amount from the respondent No.2/ defendant No.1 Kamlochan by executing the present decree against him. Due to this modification, the instant first appeal is allowed in part.

14. A decree be drawn accordingly.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor

Gowri