

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18-7-2019

Judgment delivered on 30-8-2019

FA No. 204 of 2019

- Satyanarayan Singh S/o Laxman Singh Aged About 61 Years
R/o Ayyappa Mandir Bhartiya Nagar, Police Station Civil Line,
Bilaspur Tahsil And District Bilaspur Chhattisgarh.

---- Appellant/defendant No.1

Versus

1. Rajkumar Shukla S/o Lakhanlal Shukla Aged About 50 Years
R/o Siddh Muni Baba Gali, Jabdapara, Tahsil And District
Bilaspur Chhattisgarh. (Plaintiff).
2. Chhattisgarh State Electricity Distribution Company Limited,
Through - Chief Engineer, Office Chief Engineer, Chhattisgarh
State Electricity Distribution Company Limited, Tifra, Tahsil
And District Bilaspur Chhattisgarh.
3. Chhattisgarh State Electricity Distribution Company Limited ,
Through Executive Engineer, Office Executive Engineer,
Chhattisgarh State Electricity Distribution Company Limited,
Nehru Nagar, Tahsil And District Bilaspur Chhattisgarh.
4. State of Chhattisgarh, Through Collector, Bilaspur District
Bilaspur Chhattisgarh. (Defendant No. 2 To 4).

---- Respondents

For appellant : Mr. Jitendra Gupta, Advocate.

For respondents : Mr. Jitendra Pali, Advocate.
No. 2 and 3.

For respondent No.4/ : Mr. Ravish Verma, Govt. Advocate.
State

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 11-01-2019 passed by the District Judge, Bilaspur (CG) in Civil Suit No. 7-B/2017 wherein the said court decreed the suit filed by the respondent No.1/plaintiff for compensation to the tune of Rs.3,59,750/- against the appellant and respondents No. 2 and 3.
2. Respondent No.1/plaintiff filed a civil suit for tortuous liability (negligence act) of appellant and respondents No. 2 and 3 for permanent disability caused to him on 29-7-2016. The appellant/defendant No.1 called him for performing Pooja ceremony and after performing Pooja the appellant/defendant No.1 told respondent No.1 for fixing religious flag in third floor of the house. It is alleged that respondent No.1 tagged flag in the aluminium rod and while respondent No.1 hoisting the flag, he all of a sudden came in contact with electric wire which was hanging with one feet distance from the house of the appellant. Respondents No. 2 and 3 negligently installed electric wire and due to contact of the said wire respondent No.1 received grievous injury resulting into permanent disability by burning left hand. Respondent No.1 was treated in different hospitals and he filed a suit for

compensation against the appellant and respondents No. 2 and 3 which was decreed by the trial court.

3. As per appellant, only respondents No. 2 and 3 can be held liable for negligent act because electric pole is installed by them and thereafter they did not take care of electric wire installed with pole. Appellant had nothing to do with installation of electric pole and wire and same is not within his control. The Electricity Department is only responsible for maintenance and control of electric wire, therefore, finding of the trial Court against the appellant is not sustainable. He would further submit that the finding of the trial court against the appellant is based on presumption which is incorrect. The trial court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside.

4. On the other hand, learned counsel appearing for the respondents No. 2 and 3 would submit that the finding arrived at by the trial Court is based on proper marshalling of the evidence which is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether any legal duty is attributed for taking care of electric wire and pole to appellant. Under the tort, negligence is breach of duty to take care which results in damage to the claimant. Lack of care or conduct required by law is breach of duty.

7. In the present case, incident took place due to supply of current in electric wire installed by respondents No. 2 and 3. It is not the case where incident took place that electric pole was installed upon application of appellant or approved by him. When electric pole and electric wire were installed by respondents No. 2 and 3, there is nexus of duty of respondents No. 2 and 3 to take care about the same regularly. Legal duty was required by law against respondents No. 2 and 3. When appellant has no role to play in installation of electric pole and electric wire, he had no legal duty for the same. When electric wire was installed outside the area of the house of the appellant and appellant had no control over electric pole or wire, it can be removed only by respondents No. 2 and 3 and no other one can remove the same. Respondent No.1 was under obligation to prove relationship of proximity between damage suffered by respondent No.1 and the act of the appellant. The only act which is done by the appellant is to give flag to fix it in third floor of the house of the appellant and he has not handed over any electric article to respondent No.1, incident

was not foreseeable by him, therefore, incident is remote to the act of the appellant. It cannot be said that the appellant can reasonably foresee that his act will expose the respondent No.1 to risk of injury.

8. Looking to the entire evidence it cannot be said that the appellant was negligent for the injury caused to respondent No.1 . Respondents No. 2 and 3 are responsible for the injury caused to respondent No.1, therefore, decree against the appellant is not sustainable. As the decretal amount is not under challenge, the same shall be paid by respondents No. 2 and 3 to respondent No.1.

9. Accordingly, by allowing the appeal, the decree is modified as under.

- i) Respondents No. 2 and 3 shall pay Rs.3,59,750/- to respondent No.1. If any amount is paid by them, it shall be adjusted and rest of the amount shall be paid by them to respondent No.1.
- ii) Respondents No. 2 and 3 shall pay interest @ 6% per annum to the respondent No.1 from the date of filing of the suit i.e., 10-4-2017.
- lii) Respondents No. 2 and 3 shall bear the cost of the litigation through out.

- iv) Pleader's fee, if certified, as per schedule or whichever is less.
- v) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju