

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 12-03-2019

Judgment delivered on 11-04-2019

FIRST APPEAL No. 185 of 2005

1. Kunjbihari Soni, aged 50 years s/o. Baijnath Soni, occupation Oil Expellor.
 2. Madan Soni, aged 26 years, s/o. Kunjbihari Soni, occupation Oil Expellor.
- Both r/o. Village Jhingo, P.S. & Tahsil Rajpur, Dist. Surguja (CG).

---- Appellants.

Versus

Manoj Kumar s/o. Subhashchand Jaiswal, aged about 14 years, occupation Student, r/o. Village Jhingo, PS and Tahsil Rajpur, Dist. Sarguja (CG).

– Respondent.

For appellants : Mrs. Savita Tiwari, Advocate

For respondent : Mr. A.K. Prasad and Mr. Rishi Mahobiya, Advocates.

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 29-7-2005 passed by 3rd Additional District Judge, Ambikapur Sarguja (FTC) (CG) in Civil Suit No.1-A/2002 wherein the said court decreed the suit of the respondent/plaintiff compensation to the tune of Rs.1,05,000/- with interest.

2) As per the plaint averment filed by the respondent/plaintiff, on 1-1-1998 respondent/plaintiff had reached for getting expelled mustered oil to the expeller of the appellants/defendants and during this process right hand of the respondent was cut off from the right shoulder due to coming in circulation of the expeller machine. As per version of the plaint, appellant No.2 namely Madan Soni had given oral instructions to the respondent to remove the oil from the expeller and while attempting to that work, the worn shirt of the respondent was caught along with right hand in the expeller machine and his hand was cut off. After hearing the parties, the trial Court awarded compensation as mentioned above.

3) Learned counsel for the appellants would submit as under:

- i) Appellant No.2 never advised or directed the respondent to remove wastage oil from expeller machine and it was the curiosity of the respondent himself which resulted in to present accident as being the teenager boy. He was interfering with the machine work which resulted the cut off his right hand from shoulder. Therefore, respondent is liable for the said accident for his negligent act.
- ii) The ground taken by the respondent that there was no fencing around the expeller machine, is not valid for the purpose of respondent as such type of fencing is used to provide safety to the workers and not to the intruders who are wilfully taking risk by

putting their hands in the machine.

- iii) The respondent was with his father and under the supervision of his father and safety of the child was on the part of his father and appellant No.2 Madan Soni was busy with his oil expelling work by turning off his attention from the respondent side and this was the right and proper conduct of the appellant No.2 Madan Soni which could not be targeted under the law.
- iv) The trial Court failed to apply theory of contributory negligence on part of the father of the respondent, therefore, finding of the trial Court is liable to be set aside.
- 4) On the other hand, learned counsel for the respondent would submit that no security was provided for incoming to the expeller machine area and no one was there to stop the respondent and as the appellants were engaged in business of dangerous instrument, they are under strict liability, therefore, the trial Court is right in fastening liability on them and the awarding compensation.
- 5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
- 6) The respondent/plaintiff side examined Manoj Kumar Jaiswal (PW/1), Subhashchand Jaiswal (PW/2) and Dr. Sanjay Tripathi

(PW/3) whereas appellants/defendants side examined Kunjbihari Soni (DW/1), Madan Gopal (DW/2), Dharmu (DW/3) and Vinod Kumar Mishra (DW/4). From the evidence of both sides, it is clear that right hand of the respondent/plaintiff was cut off in the expeller machine of the appellants. From the evidence of both sides, it is clear that no one was engaged by the appellants for watching the persons entering to expeller machine. No one was there to stop any one moving towards machine. From the evidence of both sides, it is clear that the appellants have also failed to stop the respondent during running the expeller machine, that is why the incident took place. The appellants were running a dangerous system and therefore, they are under strict liability to prevent anyone near the expeller. Version of direct evidence of respondent is supported by the medical evidence of Dr.Sanjay Tripathy (PW/3) and the incident is admitted by the appellants side.

7) The trial court after evaluating the entire evidence recorded the finding that the appellants are owners of the expeller machine and they failed to provide security to anyone which shows their negligent which resulted into amputation of the right hand of the respondent. Finding of the trial court is based on proper marshalling of the evidence and after re-assessing the evidence, this court has no reason to substitute contrary finding. The trial court awarded compensation of Rs.1,05,000/- and looking to 85%

disability suffered by the respondent, the same cannot be termed on higher side, therefore, compensation part is also not liable to be interfered with.

8. From the record, it appears that no amount is recovered from the appellants and suit was filed by the respondent being an indigent person and as no amount is recovered, the respondent is not liable to pay the court fee, therefore, direction of the trial court regarding recovery of court fees is not sustainable and same is hereby set aside.

9) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondent and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of the respondent through out.. As the amount is not recovered, the respondent is not liable to pay court fees.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE