

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.04.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

A.S.No.501 of 2006

- 1.The Assistant Engineer (O&M),
Tamil Nadu Electricity Board/Pallakapalayam,
Muniyappan Kovil, Tiruchengode Taluk,
Namakkal District.
 - 2.The Assistant Executive Engineer (O&M),
Tamil Nadu Electricity Board,
Sankari/West, Salem District.
 - 3.The Executive Engineer(O&M),
Tamil Nadu Electricity Board,
Akkamapettai, V.N.Palayam,
Sankari Taluk, Salem District.
 - 4.The Superintending Engineer,
Mettur Electricity District Circle,
Tamil Nadu Electricity Board,
Mettur Dam.
 - 5.The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R. Maaligai,
800, Anna Salai, Chennai-600 002.
- ...Appellants/Defendants 3 to 7

Vs

- 1.Naveen(Major)
S/o N.Palaniappan,
Arvankadu, Varanallampalayam,
Alathur Reddy Palayam, Veerachi,
Palayam PO, Salem District.
(R1 declared as a major and discharged
the guardianship Tmt.Muthulakshmi vide
order of this Court dt. 07.02.2018 by ASJ & PKJ)
..1st Respondent/Plaintiff

2.Bhavanewswaran (Minor),
Rep. by his mother and natural guardian
Pappathiammal, Vella Praikadu,
Alathur.

3.Mani @ Nanjappan,
S/o Nanjappan,
Vella Paraikadu, Alathur.

4.The Assistant Director,
Geology & Mines,
No.95, Sankar Nagar,
Salem-636 007.

5.The Director,
Mines Safety, K.G.F.,
Karnataka District.

6.The Commissioner,
Geology & Mines,
T.V.K Industrial Estate,
Guindy, Chennai.

7.Tahsildar,
Sankari.

8.The Regional Divisional Officer,
Sankari.

9.The Collector,
Salem.

.. Respondents 2 to 9/Defendants 1, 2, 8 to 13

Appeal preferred under Section 96 C.P.C. against the
judgment and decree dated 29.04.2005 passed in O.S.No.21 of 2004
on the file of Additional District Judge, Salem (Fast Track
Court-I, Salem).

For Appellants .. Mr.V.Viswanathan

For Respondents.. Mr.A.K.Kumaraswamy, S.C., for
Mr.S.Kaithamalai Kumaran for R1

Mr.Balagopal,
Special Government Pleader for
R4 and R6 to R9

R2, 3 and 5- served

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellants are the defendants 3 to 7 in a suit filed for compensation for a sum of Rs.25,00,000/-. The trial Court awarded a sum of R.12,25,000/- with interest at 9% per annum. Challenging the same, the present appeal has been filed.

2. The case of the first respondent/plaintiff is that on 06.12.2002 at about 4.30p.m., the first respondent/plaintiff was playing in the land belonging to the second respondent/first defendant, which was leased out to the third respondent/second defendant. The mining material was heaped in the land. The first respondent/plaintiff climbed over the same and came in contact with high tension line, which was situated very close to the debris, as a result, he suffered the following grievous injuries.

"1. There is full thickness circumferential burns with a dry eschar involving the whole of (L) upper limb. The left upper limb is non viable and mummified.

2. There is partial thickness to deep burns over the anterior trunk/neck posterior aspect of (R) arm (R) thigh/leg/neck and (L) foot.

3. There is full thickness burns of scalp at region of vertex.

Total burnt area amount to 40% as assessed approximately."

3. Thereafter, First Information Report came to be registered under Ex.A1 followed by a legal notice under Ex.A10. Exs.A5 to A8 are the medical expenses and the wound certificate. Ex.A13 is the reply given by the third respondent/second defendant and Ex.A13 is the letter of the Revenue Divisional Officer, Sankagiri, viz., the eighth respondent. All the defendants denied the liability. However, the fact that the land belongs to the second respondent/first defendant, which was leased out to the third respondent/second defendant is not disputed. The only contention raised by the second defendant was that he stopped the mining operations long time ago. The appellants, who are defendants 3 to 7, contended that the subsequent inspection made on 09.12.2002 followed by notice clearly indicates that there was a heap of material adjoining the high tension line. The Trial Court decreed the suit inter alia holding that Ex.B10 being subsequent and in the absence of any material to show that there was a connection between the debris and high tension line, fixed the liability

on the appellants and accordingly, decreed the suit directing the appellants/ defendants 3 to 7 to pay the compensation of Rs.12,25,000/- to the first respondent/plaintiff with interest at 9% per annum.

4. Heard the learned counsel for the appellants and the learned counsel for the respondents.

5. Despite service of notice and the names of respondents 2 and 3/defendants 1 and 2 having been printed in the cause list, none appeared for them.

6. The learned counsel for the appellants would submit that even under Ex.A1, nothing has been stated against the appellants. The complaint itself was given belatedly. Notice under Ex.A10 was also given thereafter. The trial court failed to consider the fact that the first defendant was the owner and the second defendant was the licensee. The existence of debris is not denied or disputed. Admittedly, high tension line was running above the earth. It is the case of the first respondent/plaintiff that it could not have been possible to come into contact with the high tension line to unless he climbed over the mount. The trial Court, thus, committed an error especially in view of the admitted fact that the Manager of the second defendant has admitted the guilt and paid the fine.

7. The learned Senior Counsel appearing for the first respondent/plaintiff would submit that the fact that the first respondent suffered injuries for no fault of his, is not in dispute. Similarly, the expenses incurred and the nature of the injuries are also not disputed. The first respondent was a minor aged about five years at the relevant point of time. His upper limb was immobilised.

8. The trial Court framed the following issues for consideration.

- (1) Whether the plaintiff suffered injuries in the accident due to the electrocution?
- (2) Whether the accident had occurred due to the negligence on the part of the defendants?
- (3) Whether the defendants are liable to pay Rs.25,00,000/- as compensation to the plaintiff?
- (4) Whether the plaintiff is entitled for the interest at 24% as claimed?
- (5) What other relief the plaintiff is entitled to?

9. The plaintiff marked Exs.A1 to A13 as against Exs.B1 to B11 by the defendants. On behalf of the plaintiff, two

witnesses have been examined and three others have been examined on the side of the defendants.

10. The question for consideration is as to whether the judgment and decree rendered by the Court below requires interference along with the issues framed?

11. Admittedly, the accident took place in the land belonging to the first defendant. The first defendant had entered into an agreement with the second respondent for the purpose of carrying on mining operation. The licence for mining operation was in currency. We do not find any material to hold that the mining operation was stopped. Secondly, the Court below has committed an error in putting the onus on the appellants that the high tension line got snapped, resulting in the accident. The accident had occurred because of the plaintiff touching the high tension line. The evidence also would suggest that the plaintiff climbed over the debris, which extended upto the high tension line. Though much reliance cannot be made on Ex.B10, the fact would remain that there existed the debris and the accident had occurred due to the touching of the high tension line by the plaintiff in a place in which the mining operation was going on. It is for the second defendant to disprove the fact otherwise. Hence, as stated above, the trial Court was not right in entirely placing the onus on the appellants.

12. Further more, the vital fact that the Manager of the second defendant acknowledged the negligence and paid the fine being relevant fact was not considered by the trial Court. However, we also find that there was negligence on the part of the appellants also. It is not, as if, the debris was kept in one night. It cannot be lost sight of that continuous operations have been taking place for quite a long period of time. Therefore, it is clear that even the appellants have not taken appropriate steps while keeping the debris closer to the high tension line. In such view of the matter, we are of the view that the Court below ought not to have fixed the liability on the appellants. Even the appellants cannot be absolved from the liability in toto. Therefore, we are of the view that it is a fit case where contributory negligence can be fixed both on the appellants and the second defendant. However, making the plaintiff to recover the amount from the second defendant would be cumbersome. After all, the judgment and decree of the trial Court insofar as the entitlement of the first respondent/plaintiff to get the relief, should not be disturbed.

13. In such view of the matter, while fixing the liability on the second defendant, we deem it appropriate to direct the

appellants to recover 50% of the decree amount from the second defendant in the same execution proceedings. Accordingly, the judgment and decree of the Court below stand modified by fixing 50% contributory negligence both on the appellants/Defendants 3 to 7 as well as the 3rd respondent/second defendant. The appellants shall pay the entire decree amount to the plaintiff with liberty to proceed and recover the liability from the third respondent/second defendant in the same execution proceedings.

14. With the above modification, the appeal suit is disposed of. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

raa

To

The Additional District Judge,
Fast Track Court No.1, Salem.

+1cc to Mr.A.K.Kumaraswamy, Advocate SR.No.35222

+1cc to Mr.V.Viswanathan, Advocate SR.No.35028

A.S.No.501 of 2006

RR(CO)
GMY(07/01/2020)

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