

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.11.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.1006 of 2007
and
M.P.No.1 of 2007

The Commissioner,
Ambur Municipality,
Ambur, Vellore District.

... Appellant/ Appellant /2nd Defendant
Vs

1.Babu

2.Noorinisa

3.Tamil Nadu Electricity Board,
Vellore Electricity Board (West),
Rep.by Superintendent Engineer,
At Tirupattur.

... Respondents/ Respondents/Plaintiff/ 1st Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree made in A.S.No.73 of 2006 on the file of the Principal District Judge, Vellore dated 27.04.2007 in confirming the judgment and decree in O.S.No.319 of 1995 on the file of the Sub Court, Tirupattur dated 12.08.2004.

For Appellant	: Mr.V.Raghavachari
For Respondents	: Mr.C.Prabakaran
	for R1 & R2

Mr.V.Viswanathan for R3

JUDGMENT

The second appeal has been filed challenging the judgment and decree dated 27.04.2007 passed by the Principal District Judge, Vellore in A.S.No.73 of 2006 confirming the judgment and decree dated 12.08.2004 passed by the Sub Court, Tirupattur in O.S.No.319 of 1995.

Brief facts leading to filing of the second appeal is as follows
:

2.The Appellant is the second defendant in the suit in O.S.No.319 of 1995 on the file of the Sub Court, Tiruppattur. The respondents 1 and 2 are the plaintiffs and the third respondent is the first defendant in the suit. Originally, the suit was filed by the respondents 1 and 2 against the 3rd respondent/first defendant seeking recovery of a sum of Rs.3,15,000/- as damages for the death of the plaintiffs' son due to electrocution.

3.For the purpose of convenience, the parties are described as per their ranking in the Trial Court.

4.The case of the plaintiffs is that they are the parents of the deceased Sabeer. According to them, when Sabeer was aged 19 years, on 05.09.1993 at about 9.30 p.m., he was riding his horse drawn carriage at New Bridge Bye-pass road, Ambur, North Arcot District. According to the plaintiffs, due to the careless and negligent maintenance of the high tension wires by the Tamil Nadu Electricity Board, the high tension wires in the New bridge road got snapped and the horse drawn carriage in which the deceased Sabeer was riding came into contact with the live wire. As a result of the same according to the plaintiffs, the animal as well as Sabeer were electrocuted and Sabeer died on the spot. It is the case of the plaintiffs that the accident happened only due to the negligence of the Tamil Nadu Electricity Board, whose staffs have neglected to maintain the electric lines properly and did not care to switch off the power even after snapping of the wires in the New Bridge Bye-pass road. It is their case that the Tamil Nadu Electricity Board was solely responsible for the snapping of the high tension wires and they are responsible for the death of Sabeer. According to the plaintiffs, they are sick and the deceased boy Sabeer was earning not less than Rs.200/- per day. It is also their case that the animal which was pulling the Cart was hale and healthy and was worth not less than Rs.10,000/- and the carriage was worth about Rs.5,000/-. It is their case that the Tamil Nadu Electricity Board is vicariously liable to pay compensation to the plaintiffs for the death of their son Sabeer. According to the plaintiffs, they have estimated the damages at Rs.3,15,000/- and they have also sought for interest at 12 % per annum from the date of filing of the suit. The Appellant namely the Commissioner, Ambur Municipality, Vellore was impleaded as a second defendant in the suit by virtue of the order passed by the Trial Court on 15.03.2004. The application to implead the Appellant as the second defendant in the suit was filed by the plaintiffs only in the year 2004, though the suit was filed in the year 1995 itself.

5.A written statement was filed by the first defendant Tamil Nadu Electricity Board denying the allegations contained in the plaint. They have stated that by virtue of G.O.Ms.No.344

(Municipal Administration and Water Supply Department) dated 9.6.1989, the Tamil Nadu Electricity Board had handed over the maintenance of the street lights to the second defendant, Municipality. As per the said Government Order, according to them, it is only the second defendant, Municipality, who is liable to maintain the high tension wires at New Bridge Bye-pass road and therefore, they are not liable to compensate the claim of the plaintiffs. It is also stated in the written statement that the compensation claimed by the plaintiffs is also excessive. It is also their case that no notice was given to the Tamil Nadu Electricity Board prior to the institution of the suit by the plaintiffs.

6.A written statement has also been filed by the second defendant Municipality in the suit denying the allegations contained in the plaint. According to them, the suit is hopelessly barred by law of limitation as they were impleaded as a party only in the year 2004, whereas, the suit was instituted in the year 1995 itself. Further, they have stated that it is only the Tamil Nadu Electricity Board, the first defendant, who is liable to pay the compensation if any to the plaintiffs. According to them, the responsibility to maintain the high tension wires solely lies with the Tamil Nadu Electricity Board and they are no way responsible for the maintenance of high tension wires.

7. The Trial Court framed the following issues.

(1) Whether the plaintiffs are entitled to receive the compensation and as to how much amount ?

(2) Whether the plaintiffs son Sabeer died due to the electrocution as a result of the negligence of the defendants ?

(3) Whether due to non issuance of notice prior to institution of suit, the suit will fail against the defendants ?

(4) Whether the defendants are liable to compensate the claim, since the bridge was under the maintenance of the Municipality ?

(5) To what other reliefs ?

8. Additional issues have also been framed by the Trial Court, which are as follows.

(1) For the death of Sabeer, which of the defendants are negligent ?

(2) Whether which of the defendants are liable to compensate the death of the plaintiffs son Sabeer ?

(3) Whether the suit is barred for non issuance of pre suit notice ?

- (4) Whether the plaintiffs are entitled to receive compensation as prayed for in the suit?
- (5) To what other reliefs ?

9.The Trial Court after framing issues and additional issues and after trial and after hearing the submissions of the respective counsels decreed the suit as against the Appellant / 2nd defendant by its judgment and decree dated 12.8.2004 in O.S.No.319 of 1995. As regards the first defendant namely the Tamil Nadu Electricity Board is concerned, the Trial Court exonerated them. Aggrieved by the judgment and decree dated 12.8.2004 passed in O.S.No.319 of 1995 by the Sub Court, Tiruppattur, the 2nd defendant Municipality in the suit preferred an appeal before the Principal District Judge, Vellore in A.S.No.73 of 2006. By judgment and decree dated 27.4.2007 passed in A.S.No.73 of 2006, the learned Principal District Judge, Vellore confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the Commissioner, Ambur Municipality, Vellore, which is the 2nd defendant in the suit has preferred this second appeal.

Submissions of the learned counsels:

10.Heard Mr.V.Raghavachari, learned counsel appearing for the Appellant, Mr.C.Prabakaran, learned counsel appearing for the respondents 1 and 2 and Mr.V.Viswanathan, learned counsel appearing for the third respondent.

11.Mr.V.Raghavachari, learned counsel for the Appellant drew the attention of this Court to Ex.B1, which is G.O.Ms.No.344 (Municipal Administration and Water Supply Department) dated 9.6.1989. He also drew the attention of this Court to the judgment and decree of the Trial Court, as well as the lower appellate Court. By referring to the judgments of the Courts below, the learned counsel for the Appellant would submit that only based on Ex.B1, the Tamil Nadu Electricity Board has been exonerated from liability. Referring to Ex.B1, the learned counsel for the Appellant would submit that high tension wires have to be maintained only by the Tamil Nadu Electricity Board.

12.The learned counsel for the Appellant also referred to various Clauses found in the Government Order and in particular, he referred to Clause (5) of the Government Order and submitted that all the inter connecting wires between street lights have to be maintained only by the Tamil Nadu Electricity Board. He further submitted that only after prior permission, the Appellant Municipality can even carry out the replacement/repair works. According to him, the Trial Court as well as the lower appellate Court by total non application of mind has held that the Appellant Municipality is liable to compensate the

plaintiffs for the electrocution of their son Sabeer. The learned counsel for the Appellant also drew the attention of this Court to the Tamil Nadu Electricity Distribution Code, 2004 and in particular, he referred to Clause 16 of the Tamil Nadu Electricity Distribution Code, 2004 and submitted that as regards safety and maintenance aspects, the Tamil Nadu Electricity Board is solely responsible. According to him, the Tamil Nadu Electricity Board cannot shirk its responsibility as the accident happened only due to their negligence in maintaining the high tension wires, which got snapped and resulted in the electrocution of Sabeer.

13.The learned counsel for the Appellant also submitted that the claim as against the Appellant Municipality is hopelessly barred by law of limitation. According to the learned counsel for the Appellant, even though, the suit was filed in the year 1995, the Municipality was impleaded as second defendant only in the year 2004. The learned counsel for the Appellant drew the attention of this Court to the judgment and decree of the Trial Court and submitted that even though a specific plea was raised by the Appellant Municipality in the written statement, that the suit is barred by limitation, the trial court failed to frame the issue of limitation. Therefore, according to the learned counsel for the Appellant, by total non application of mind, the Trial Court as well as the lower appellate Court have held that the Appellant Municipality was liable to compensate the claim of the plaintiffs.

14.Per contra, the learned counsel for the third respondent/ Electricity Board would submit that the Government Order is very clear that the responsibility to maintain the connecting wires between the street lights is vested only with the Appellant Municipality. He also drew the attention of this Court to the judgment of the Trial Court which has referred to the admission made by D.W.2 (the Appellant Municipality witness) in his deposition that the responsibility to maintain the connecting wires between street lights is only vested with the Appellant Municipality. According to him, the findings of the Courts below is in accordance with law and in accordance with evidence available on record.

15.The learned counsel for the respondents 1 and 2 (plaintiffs) would submit that even though, the decree was passed as early as on 12.8.2004, till date they are unable to recover the compensation, though both the defendants have not disputed that Sabeer died only due to electrocution caused by snapping of electrical wires in the highway.

Discussions:

16.This Court has perused and examined the impugned

judgments of the Courts below as well as the materials and evidence available on record. It is not in dispute that only due to snapping of the connecting wires in the highway, the plaintiffs' son Sabeer died, as a result of electrocution. It is stated in the plaint that Sabeer was earning a sum of Rs.200/- per day. No contra evidence was produced by either of the defendants to disprove the said claim. The only point for consideration is whether the first defendant in the suit is liable or the second defendant is liable or both of them are jointly and severally liable to pay the compensation to the plaintiffs. The Trial Court has decreed the suit against the Appellant Municipality, who is the 2nd defendant in the suit based on G.O.Ms.No.344 (Municipal Administration and Water Supply Department) dated 9.6.1989, which was marked as Ex.B1 and exonerated the Tamil Nadu Electricity Board, who is the first defendant in the suit. As rightly contended by the learned counsel for the Appellant, the said Government Order (Ex.B1) does not reveal that the Appellant Municipality, who is the 2nd defendant in the suit is responsible to maintain the high tension interconnecting wires between the street lights in the Bye-pass road.

17.Ex.B1 (G.O.Ms.No.344 (Municipal Administration and Water Supply Department) dated 09.06.1989, is extracted hereunder :

"Proceedings :

In the Government Order cited, Government have transferred the responsibility for the maintenance of street-lights from the Tamil Nadu Electricity Board to the Municipalities and Municipal Townships.

2.The Officials of Tamil Nadu Electricity Board had a detailed discussion with the Director of Municipal Administration regarding the modalities of giving effect to these orders. Consequently the following instructions are issued.

(i) The maintenance of street-lights (in "as is where is" condition) will be handed over by the Board to the Municipalities and Municipal Townships (i.e.) the Commissioners of Municipalities and the Executive Officers of Municipal Townships on 15.9.1989.

(ii) The number of existing street-lights category-wise will be furnished by the respective Assistant Executive Engineer of the Board of the Commissioner of the Municipality and the Executive Officer of the Municipal Townships and the latter's acknowledgement obtained.

(iii) A joint inspection shall be done between 10th and 15th of September 1989 and street-ward list of lights burning and non-burning shall be prepared. This list should be signed by Municipal and Municipal Township officials of TNEB officials as a token of

taking over of street-light maintenance.

(iv) Hereafter the replacement/repair works of the street-lights will be done by the Municipalities/Municipal Townships after getting line clear from the concerned officials of the Tamil Nadu Electricity Board. The Assistant Engineer/Junior Engineer should instruct his field staff suitably so that line clear when required by Municipal maintenance staff is given with due care to avoid accidents. There should be perfect understanding between the Municipal maintenance staff and the TNEB staff in this regard.

(v) In respect of new street-lights, all the fittings including tube-lights or high intensity bulbs (Sodium vapour and Mercury vapour lamps) shall be supplied and installed by the Municipalities / Municipal Townships after proper load sanction from the Tamil Nadu Electricity Board.

(vi) The Superintending Engineers shall not hand over any of street-light materials like chokes, tube lights etc. to the Municipalities/Municipal Townships. They may be retained for use in the Board.

3.No fresh tenders will be floated by the Board for street-light fittings and accessories for Municipalities and Municipal Townships.

4.The quarterly joint inspection of street-lights by the Board staff and Municipal staff in Municipal and Municipal Township areas ordered in lr.No.SE/RE & 1 (D)/RE3/H/651/88, dated 15.6.88 may be discontinued.

5.The Chief Engineers (Distribution) and the Superintending Engineers of Distribution Circles should closely supervise the enforcement of these instructions.

6.The Chief Engineers (Distribution) shall send a confirmatory report on handing over of street lights as above to Member (Distribution) by name cover."

18.As seen from the aforesaid Government Order even for replacement/repair works of street-lights, the Appellant Municipality will have to get prior permission from the Tamil Nadu Electricity Board officials. The safety and maintenance of the high tension wires is vested only with the Tamil Nadu Electricity Board as seen from Clause 16 of the Tamil Nadu Electricity Distribution Code, 2004, which reads as follows :

"16. Safety Aspects: -

(1)Provisions with respect to safety and electricity supply is dealt in detail under section 53 of the Electricity Act, which reads as:

" (1)The Authority may in consultation with the State Government,specify suitable measures for -

(a) Protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b)Eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;

(c)Prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;

(d)Giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;

(e)Keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;

(f)Inspection of maps, plans and sections by any person authorized by it or by Electrical Inspector or by any person on payment of specified fee;

(g)Specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use;"

(2)The measures specified by the Authority, in accordance with the above provision shall form the basis for safety. Primary focus should be laid on safety in all the works related to the location, erection, installation, operation and maintenance of the equipments, devices and other network components at the consumer's mains/premises. Safety of the end users, operating personnel and public shall be given focused attention. Adequate training will be imparted to the operating personnel with the adoption of relevant operating techniques and safety procedures / precautions necessary for satisfactory operation of the system and its equipments which include cross boundary connections and interface points as applicable.

(3)Safety co-ordination: The salient aspects involved in safety co-ordination are:

a. The Licensee and the consumers of the distribution system shall observe safety rules, practices and precautions when work is to be carried out on any apparatus or circuits in any part of the distribution system or in any part of the consumer system.

b. The objective of this safety co-ordination is to enforce the principles of safety as prescribed in the measures specified under section 53 of the Act and practices for their implementation.

c. [There shall be proper co-ordination between operating personnel of the Licensee and the consumers, between two distribution licensees across common control boundaries, for carrying out work on any apparatus, switchgear, or circuits belonging to each party at the point of interconnection or interface].

d. The Licensee shall follow the provisions of the TNEGC for cross boundary operations in co-ordination with the STU

e. The Licensee, all consumers and any other distribution Licensee having common electrical interface with the Licensee shall designate suitable persons to be responsible for safety co-ordination. These persons shall be referred to as control persons. The list of control persons, their designation and telephone numbers shall be exchanged between all 2 [persons concerned]. Any change in the list shall be notified promptly to all concerned.

f. The disconnecting device / or devices shall be provided at each electrical interface, which shall be capable of effectively disconnecting the system of the Licensee and other consumers and grounding the respective system at the common boundary. These devices shall be identified and marked by the Licensee and respective consumer and shall be maintained in good condition at all times. Such disconnecting devices shall be provided with interlocks to prevent inadvertent switching operations by unauthorized persons.

g. Permission in writing shall be issued by the appropriate control person at the electrical interface to his/her counterpart responsible for carrying out work on any apparatus, switchgear or circuits beyond the electrical interface. Such permissions shall be termed as Line Clear Permits (LCP). The format of the LCP shall be standardized by the Licensee and shall be used by all concerned. Detailed rules framed by the Licensee pertaining to such works and Line Clear Permits (LCPs) shall be

circulated to its personnel as part of its internal administration.

h. A list containing the names and other details of the Officers/staff who are authorized to issue / get LCPs on the apparatus, lines and cables may be 1[displayed] at an apt location in the substation.

i. The Licensee shall formulate a checklist of operations to be carried out before the issue and return of LCPs and procedures for safety co-ordination for each electrical interface. Such procedures and checklist shall be issued to all concerned, by the Licensee, for implementation.

j. The Licensee shall prepare a safety manual incorporating all operating procedures in addition to safety rules and safety precautions applicable to its distribution system and the Consumer's system and circulate the same among 2[all staff concerned] and Consumers for strict adherence.

k. The Licensee shall devise and maintain uniform operating procedure for switching, isolation, and restoration, live line working and test charge of defective lines/apparatus duly incorporating the safety aspects."

19.It is clear from the aforesaid Government Order(Ex.B1) as well as from the Tamil Nadu Electricity Distribution Code, 2004 that the responsibility to maintain the electrical lines laid by the Tamil Nadu Electricity Board is vested only with the Tamil Nadu Electricity Board, who is the first defendant in the suit.

20.However, the Trial Court by total non application of mind decreed the suit by misapplying the Government Order (Ex.B1) and erroneously holding that the responsibility to maintain the inter connecting wires in the highways is vested with the Appellant Municipality, who is the 2nd defendant in the suit.

21.The Trial Court has erroneously in its judgment has observed that D.W.2, the Appellant / 2nd defendant witness has admitted that it is only the Appellant Municipality, who is responsible for the maintenance of inter connecting wires between the street-lights. This Court has perused and examined the deposition of D.W.2 before the Trial Court. But to the surprise of this Court, it is found from the deposition of D.W.2 that there is no such admission made by him. Therefore, it can be conclusively established that the Trial Court by total non application of mind has come to the erroneous conclusion that the Appellant Municipality is liable to compensate the plaintiffs for the electrocution of their son Sabeer.

22.As rightly pointed out by the learned counsel for the Appellant, the Trial Court has not considered the issue of

limitation, though it was specifically pleaded in the written statement filed by the Appellant Municipality. Admittedly, the suit was filed in the year 1995 and the impleading application was filed only in the year 2004 and the same was allowed by the Trial Court on 15.03.2004. This being the case, prima facie, this Court finds that the suit is barred by law of limitation as against the Appellant Municipality. Even though, a specific plea of limitation was raised in the written statement filed by the Municipality, the issue of limitation as against the Appellant Municipality was not framed and considered by the Trial Court. On the ground of limitation also, the Appellant Municipality is also not liable to compensate the claim of the plaintiffs.

23. Excepting for taking the defence that the Tamil Nadu Electricity Board is not liable to compensate the plaintiffs and it is only the Appellant Municipality, who is liable to compensate the plaintiffs as it is their responsibility to maintain the inter connecting wires between the street-lights, no other defence has been taken by the Tamil Nadu Electricity Board and they have not seriously disputed the claim of the plaintiffs with any evidence. This being the case, the plaintiffs are entitled to receive compensation for the death of Sabeer, and the animal as well as for the damages sustained to the Cart. As observed earlier, from the materials and evidence available on record, the Tamil Nadu Electricity Board, who is the first defendant in the suit, is solely liable to compensate the plaintiffs. By total non application of mind, the suit has been erroneously decreed by the Trial Court against the Appellant Municipality and confirmed by the lower Appellate Court instead of decreeing the suit against the 3rd respondent Electricity Board, who is the first defendant in the suit.

24. The power to modify a decree is available to the appellate court under order 41, Rule 33 of Civil Procedure Code. The object of order 41 Rule 33 is to do complete justice between the parties. In the case on hand, the plaintiffs sought reliefs against both the defendants. The trial court decreed the suit against the Appellant Municipality alone which was confirmed by the lower appellate court. For the foregoing reasons, this Court has come to the conclusion that the Appellant Municipality is not liable for the suit claim instead it is only the Tamil Nadu Electricity Board, the first defendant in the suit is solely responsible to compensate the plaintiffs. Hence, the suit ought to have been decreed only against the Tamil Nadu Electricity Board, the first defendant in the suit and not against the Appellant Municipality, who is the second defendant in the suit. The illustration to order 41 Rule 33 CPC is identical to the case on hand. The illustration reads as follows:

A claims a sum of money as due to him from X or Y, and in a

suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

25. In the case on hand also, the suit was filed both against the Tamil Nadu Electricity Board as well as the Ambur Municipality. The suit was decreed only against the Ambur Municipality and the Tamil Nadu Electricity Board was exonerated. The appellate court confirmed the findings of the trial court. This Court as observed earlier has come to the conclusion that both the courts below have by total non application of mind have erroneously held the Ambur Municipality liable instead of holding the Tamil Nadu Electricity Board liable to compensate the plaintiffs. This Court cannot be a silent spectator even when the plaintiffs have not filed any appeal challenging the findings of the courts below which have erroneously held the Appellant Municipality liable for the suit claim instead of the Tamil Nadu Electricity Board. Applying order 41 Rule 33 CPC, in order to do complete justice to the parties, this Court allows the appeal filed by the Appellant by modifying the decree passed by the trial Court in O.S.No.319 of 1995 holding that the third respondent/1st defendant is liable to pay the decretal amount to the plaintiffs instead of the Appellant/2nd defendant.

26. In the result, the judgment and decree of the Courts below are hereby set aside and the appeal stands allowed by modifying the decree dated 12.8.2004 passed by the Sub Court, Tiruppattur in O.S.No.319 of 1995 by directing the 1st defendant/Tamil Nadu Electricity Board, to pay the decretal amount to the plaintiffs instead of the 2nd defendant, the Appellant herein, who is now absolved of any liability. The third respondent Tamil Nadu Electricity Board/1st defendant shall make the payment as per the modified decree within a period of three months from the date of receipt of a copy of this judgement. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge, Vellore.

2.The Subordinate Judge, Tirupattur.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.C.Prabhakaran , Advocate SR.No.94676

+1cc to Mr.V.Ragavachari , Advocate SR.No. 94070

S.A.No.1006 of 2007 and M.P.No.1 of 2007

A.SK(28/09/2020)