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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.1627 OF 2003

AND

C.M.P.NO.14897 OF 2003

1. Tamil Nadu Electricity Board
rep by its Superintending Engineer,
Nagapattinam Taluk,
Nagapattinam.
 2. The Executive Engineer,
Tamil Nadu Electricity Board,
Tiruvarur Taluk,
Tiruvarur.
- ... Appellants

Vs.

1. Amutha
 2. Minor Sangeetha
 3. Minor Ragavan
Minors 2 & 3 are rep by
their mother and natural
guardian the first respondent
 4. The Manager,
St.Mary's Church,
Karaiyur, Nannilam Taluk.
- ...Respondents

Prayer :-

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.09.2002 made in A.S.No.49 of 2002 passed by the Principal District Court, Nagapattinam, confirming the judgment and decree dated 20.07.2001 made in O.S.No.280 of 2000 passed by the Sub Court, Tiruvarur.

For Appellants : Mr.V.Viswanathan

For Respondents

For R1 to R3 : Mr.K.Raghuraman

For R4 : Notice served



JUDGMENT

This appeal has been filed as against the judgment and decree dated 20.09.2002 passed in A.S.No.49 of 2002 on the file of the Principal District Court, Nanapattinam, confirming the judgment and decree dated 20.07.2001 passed in O.S.No.280 of 2000 on the file of the Subordinate Court, Tiruvarur.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for seeking compensation. The plaintiffs are the wife and two minors viz., son and daughter of the deceased. On 11.09.1994, the deceased was engaged with the agricultural work in the third respondent's land. While he was working in the field, he touched the electric wire, which was lying in the agricultural field and electrocuted and died. On 12.09.1994, the post-mortum was conducted and it came to know that his death caused due to electrocution. It was happened only due to the negligence of the first and second defendants. While the deceased was died, he was aged about 28 years. He earned a sum of Rs.50 per day as agricultural cooly. Thereafter on 10.09.1996, the plaintiffs caused legal notice to the defendants 1 and 2 for seeking compensation. Hence the suit for compensation.

4. The second defendant on his behalf and on behalf of the first defendant filed written statement and stated that along with the electric wire, there was a telephone wire also tagged together, in the place of occurrence. After seeking the telephone wire laid on the field, to take the telephone wire, the deceased went to the place and while taking the telephone wire, he touched the electric wire and as such electrocution was happened. The electric wire was never laid in the agricultural field. Therefore, there is no question of negligence on the part of the first and second defendants. Further they denied the daily income of the deceased and prayed for dismissal of the suit.

5. On the side of the plaintiffs, examined P.W.1 and 2 and the were marked Ex.A.1 to Ex.A.4. On the side of the defendants, examined D.W.1 and no documents were marked as exhibit. Based on the materials placed on record both oral and documentary evidences adduced by the respective parties and also the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiffs. Aggrieved by the same, the defendants 1 & 2, filed an appeal suit in A.S.No.49 of 2002 and the same was also dismissed. Therefore, the defendants 1 & 2



preferred this Second Appeal.

6. At the time of admission on 30.10.2003, the following substantial questions of law were formulated for consideration:-

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"1. Whether the Courts below were right in granting the relief without taking into consideration of contributory negligence on the part of the deceased?

2. Whether the Courts below were right in holding the department guilty of negligence in the absence of positive proof?"

7. The learned counsel appearing for the appellants and the respondents are reiterated the averments made in the plaint and written statements.

8. Heard Mr.V.Vishwanathan, learned counsel appearing for the appellants/defendants 1 & 2 and Mr.K.Raguraman, learned counsel appearing for the respondents/plaintiffs.

9. This Court considered the rival submission made by the learned counsel on either side. The only point raised by the appellants/defendants is that the Courts below failed to consider the contributory negligence on the part of the deceased. Further the entire negligence foisted on the defendants in the absence of positive proof.

10. Admittedly, the deceased was an agricultural cooly and he was working in the agricultural land belongs to the third defendant. He was electrocuted and died on 11.09.1994 and the post mortum report also confirmed that he died only due to electrocution. The electric wire was lying on the agricultural field as such while working in the agricultural field, the deceased was electrocuted and died. Though the defendants 1 & 2 took a plea that while taking the telephone wire, the deceased was touched the electric wire and electrocuted, no piece of evidence has been produced by them to prove their case.

11. Further at the time of death, the deceased was only 28 years and the trial Court applied the multiplier at 18 and had the monthly salary as minimum wages at Rs.1,500/- per month and fixed the annual salary as Rs.18,000/-. Accordingly, the trial Court awarded compensation of Rs.2,16,000/- after reduction of total 1/3 income. The first appellate Court also confirmed the same and rightly dismissed the appeal filed by the defendants 1 & 2.



12. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below in favour of the plaintiffs. As such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and allowed the suit filed by the plaintiffs. Accordingly, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiffs and as against the defendants 1 & 2.

13. In fine, the Second Appeal stands dismissed by confirming the judgment and decree of the Courts below. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal District Judge,
Nagapattinam.
2. The Sub Judge,
Tiruvarur.
3. The Section Officer,
V.R. Section, Madras High Court,
Chennai.

+1cc to Mr.K.Raghuraman, Advocate, S.R.No.105578

S.A.No.1627 of 2003 and
C.M.P.No.14897 of 2003

MG(CO)
CS/15/07/2020