

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

S.A.No.231 of 2018

and

C.M.P.No.5914 of 2018

1. Chairman,
Tamil Nadu Electricity Board, Chennai.
Rep. by his Power Agent,
The Chief Engineer/Distribution,
Villupuram Region,
Tamil Nadu Electricity Board,
Villupuram.
(As per order in I.A.31/13, dated 06.02.2013)
 2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Villupuram.
 3. Executive Engineer,
Tamil Nadu Electricity Board,
Marakkanam, Pondy Road,
Tindivanam.
 4. Assistant Engineer,
Tamil Nadu Electricity Board,
Kollar Village and Post,
Tindivanam Taluk
- Appellants

1. Gangatharan
2. Uma
3. Minor Usha,
D/o. Gangatharan
4. Minor Uthra,
D/o. Gangatharan

Radhakrishnan (died)

5. Vasantha
6. Radhika
7. Rajesh

... Respondents

Prayer : This Second Appeal has been filed under Section 100 CPC against the judgment and decree dated 08.01.2016 made in A.S.No.15 of 2013 on the file of the II Additional District Judge, Tindivanam, and confirming the judgment and decree dated 25.11.2011 made in O.S.No.56 of 2009 on the file of Principal Subordinate Judge at Tindivanam.

For appellants : Mr. V.Viswanathan
For respondents : Mrs. R.Meenal
for R1 to R4

: Mr. D.Ravichandran,
for R5 to R7

JUDGMENT

The defendants 2 to 5 are the appellants herein. The respondents 1 to 4 herein are the plaintiffs, who have filed a suit for compensation for the death of one Selvi, the wife of the first plaintiff and mother of plaintiffs 2 to 4.

2. The case of the plaintiffs in brief is as follows :

The deceased one Selvi is the wife of the first plaintiff and the mother of the plaintiffs 2 to 4. The first defendant in the suit is an agriculturist and owned agricultural lands. On 25.04.2006, when the deceased Selvi and one of her daughter went to the land of the first defendant for washing their clothes in the motor pumpset, they were electrocuted and Selvi succumbed to injuries. According to the plaintiffs, the first defendant has taken the service line from the Electricity Board to the Pumpset through under ground pipeline and due to electrical leakage in the pipeline, the deceased electrocuted. The accident had taken place due to the illegal act of the first defendant and the defendants 2 to 5, the Electricity Board, who are supposed to maintain the electricity service line connection in a proper manner, failed to do so. Hence, all the defendants are jointly liable to pay the compensation for the death of his wife Selvi.

3. The 5th defendant, Assistant Executive Engineer, Tamil Nadu Electricity Board, filed a written statement stating that the first defendant has taken service line for the motor pumpset through under ground pipeline and due to which there is an electric leakage, ultimately, resulted in electrocution of the deceased. According to the 5th defendant, the service line should be taken openly from the electric pumpset to the consumer premises and it is the duty of the consumer to maintain the service line, and the first defendant has taken the electricity

service line through underground pipeline without getting any permission from the Electricity Board, and the accident is not on the negligence of the Board and the Board cannot fixed with any liability.

4. Considering the materials available on record, the trial Court has come to a conclusion that the accident has taken place due to the illegal act of the first defendant, who has taken the service line through underground pipe line. Since the Electricity Board supposed to maintain the service line, but they failed to discharge their statutory obligation. Hence, the trial Court decreed the suit, directing both the defendants to pay the compensation of Rs.5,00,000/-vide judgment and decree dated 25.11.2011.

5. Aggrieved by the same, the first defendant and the defendants 2 to 5 have filed two separate appeals in A.S.Nos.25 of 2012 and 15 of 2013 on the file of the II Additional District Court, Tindivanam. The First Appellate Court, after considering the various provisions of the Electricity Act as well as the Tamil Nadu Electricity Distribution Code, has come to a conclusion that the accident has been taken place only due to the negligence of all the defendants, and thereby dismissed the suit by a common judgment and decree dated 08.01.2016 and thereby confirmed the judgment and decree passed by the trial Court. Now, challenging the above judgment and decree, the defendants 2 to 5, Tamil Nadu Electricity Board, is before this Court with this second appeal. However, against the dismissal of the Appeal, no appeal has been preferred by the first defendant, and the decree passed against the first defendant has now become final.

6. The following substantial question of law has been framed for consideration in the Second Appeal :-

1. Whether both the Courts below are right in making the Electricity Board liable to pay the compensation to the claimants when the occurrence of the accident had happened inside hte premises of the first defendant.

2. Whether both the Courts below are right in concluding the judgment by direct the Electricity Board to pay the compensation jointly with the first defendant when all the findings were against the first defendant.

3. Whether both the Courts below are right in observing that the fraudulent act, done by the first defendant by drawing the Electricity Line under ground is amount to negligence of the Electricity Board.

7. I have heard both sides and perused the materials available on records carefully.

8. The learned counsel appearing for the appellants would contend that only by an illegal act of the first defendant, the accident has taken place. At any rate, no negligence can be fixed on the Electricity Board and consequently, they are not liable to pay any compensation. The learned counsel also referred to Clause 30 of the Tamil Nadu Electricity Distribution Code, and contended that the maintenance of wiring on consumer's premises shall lie upon the consumer, and the Board has no role to play in it. The first defendant has taken the service line from the main line to his premises illegally without any proper permission from the Electricity Board, and the accident had occurred only due to the illegal act of the first defendant, therefore the Board cannot be made liable.

9. Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that it is the mandatory duty of the Board to maintain the service line, however, the Board was negligent in maintain the same, hence the Board is also liable to pay the compensation.

10. The learned counsel appearing for the first defendant also referred to various provisions of Electricity Act, as well as the Tamil Nadu Electricity Distribution Code. Since, it is the duty of the Electricity Board to maintain the service line, the Bank cannot escape from its liability.

11. I have considered rival submissions and perused the materials available on records carefully.

12. It is also admitted fact that the first defendant has taken the service line from the distribution main line to his motor shed through a underground pipeline, where there was electricity leakage and due to which, the deceased Selvi was electrocuted. According to the Board, the consumer is not permitted to draw the service line through an underground pipeline and it should be drawn only in the open line to any premises. Thus, it is only the illegal act of the consumer, for which the Electricity Board cannot be mulcted with any liability.

13. Considering the various provisions of the Electricity Act 2003, as well as the Tamil Nadu Electricity Distribution Code, , it is clear that it is the duty of the Electricity Board to maintain the service line.

14. Section 2(61) of the Electricity Act 2003 defined Service line , which reads as follows :

61) " service-line' means any electric supply-line through which electricity is, or is intended to be supplied :

a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or

b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

Clause 29(17) of the Tamil Nadu Electricity Distribution Code says that the service line would be the property of the licensee and the licensee ought to have maintain at his own cost, which reads as follows :

Clause : 29

17) The entire service line will be the property of the licensee and the licensee will maintain it at his/her cost."

15. From the combined reading of these provisions, it is clear that it is only the duty of the Electricity Board to maintain the service line till it reaches the consumer premises. But, in the instant case, the first defendant/consumer has taken the service line from the distribution main directly to his premises through a underground pipeline. Admittedly, the Electricity Board, who is supposed to maintain the service line did not take any action against the consumer. DW2, the Assistant Engineer, Tamil Nadu Electricity Board, has clearly stated in his evidence that they have not taken any action against the consumer. Considering the above circumstances, both the Courts below have concurrently held that a mandatory duty cast upon the Electricity Board to maintain the service line, but they have failed to discharge the same, and hence, Board also equally negligent on its part and the defendants are jointly and severally liable to pay the compensation. I have also gone through the entire materials, I find no irregularity or perversity in the judgment passed by the Courts below. In view of the findings rendered above, the substantial questions of law are answered against the appellant and the second appeal is liable to be dismissed.

14. In the result, the second appeal is dismissed and the judgment and decree of the First Appellate court confirming the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

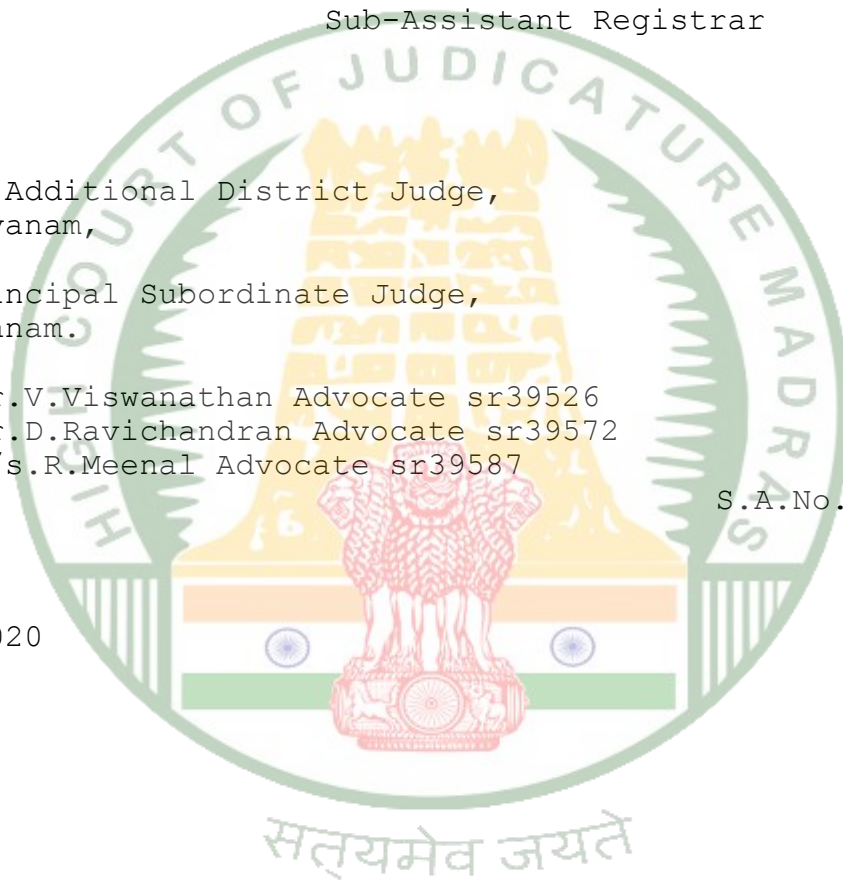
To

1. The II Additional District Judge,
Tindivanam,
2. The Principal Subordinate Judge,
Tindivanam.

+1cc to Mr.V.Viswanathan Advocate sr39526
+1cc to Mr.D.Ravichandran Advocate sr39572
+1cc to M/s.R.Meenal Advocate sr39587

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