

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.162 of 2014

Velu

.. Appellant/Plaintiff

vs.

1.Junior Engineer,
Rural West,
Tamil Nadu Electricity Board,
Pathirikuppam.

2.The Superintending Engineer,
Cuddalore Electricity
Distribution Circle,
Tamil Nadu Electricity Board,
Nethaji Road,
Cuddalore-1.

... Respondents/Defendants

Appeal under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree dated 05.04.2007 made in O.S.No.50 of 2006 on the file of the learned Principal District Judge, Cuddalore District at Cuddalore.

For Appellant : Mr.S.K.Rakhunathan
For Respondents : Mr.V.Viswanathan

J U D G M E N T

The Appeal Suit on hand is filed by the appellant/plaintiff to set aside the judgment and decree dated 05.04.2007 passed by the learned Principal District Judge, Cuddalore in O.S.No.50 of 2006 and enhance the compensation as prayed for in the plaint.

2. The plaintiff is the appellant and the defendants are the respondents in the appeal suit.

3. The facts in nutshell put forth by the appellant/plaintiff are that he sustained severe burn injuries due to the bursting of a transformer in the land at Arisiperiyankuppam on 22.01.2005 at about 12.00 hours. The

plaintiff attributes a rash and negligence on the part of the employees of the defendants-Electricity Board. The appellant/plaintiff prayed for a sum of Rs.6,00,000/- towards compensation.

4. The defendants rebutted the contentions by stating that on 22.01.2005, after taking all precautionary measures, energising commenced in the transformer in S.S.III at Arisiperiyankuppam, but it burst unexpectedly and the oil in the transformer spilled all over the area and very seriously injured the first respondent/first defendant as well as the appellant/plaintiff. Before energisation, the appellant/plaintiff was specifically asked to go away from that place and despite that the appellant/plaintiff stood in the coconut thope nearby and witnessed the work. The plaintiff is a tort-feasor and as such he is not entitled to get any compensation from the respondents defendants.

5. The Trial Court framed the following issues:-

- "(i) Whether the bursting of transformer was due to the negligence on the part of the employees of the defendants ?
- (ii) Whether the plaintiff is entitled to any compensation and if yes, what is the quantum ?
- (iii) To what relief ?"

6. With reference to the first issue, the Trial Court found that on 22.01.2005, the employees of the Tamil Nadu Electricity Board were engaged in energising a new transformer in S.S.III in Arisiperiyankuppam village within the limits of Section Officer Rural/West/Cuddalore. When the work of energizing commenced, the transformer burst and due to the said burst, the boiling oil inside the transformer spilled all over the area and in which the first respondent/ first defendant as well as the appellant/plaintiff sustained burn injuries.

7. Admittedly, the appellant/plaintiff had undergone treatment at the Government District Headquarters Hospital, Cuddalore and then at Kannan Hospital, Manjakuppam.

8. Though the parties have disputed regarding the allegations of rash and negligent act on the part of the Tamil Nadu Electricity Board employees, the fact remains that the transformer burst at about 12.00 Noon and the hot oil sprinkled on the body of the appellant/plaintiff, resulting in grievous burn injuries. The fact regarding energisation of the transformer was not disputed. The fact regarding bursting of the transformer was also not disputed and the fact that regarding sprinkling out of the hot oil from the transformer was also not

disputed and the grievous burn injuries sustained by the appellant/plaintiff was admitted by the parties.

9. However, the contention of the respondents/defendants in the appeal suit is that the appellant/plaintiff is the tort-feasor as he was warned to stay away from the work spot where the transformer was installed and therefore, the appellant/plaintiff had himself voluntarily invited the accident and consequently, he is not entitled for any compensation from the Tamil Nadu Electricity Board. It is further contended that the Tamil Nadu Electricity Board had taken all precautionary measures such as testing of the parameters of the newly installed transformer. Sufficient and adequate warnings were given to the general public by the authorities of the Electricity Board, to move away from the place where the transformer was installed. Therefore, the appellant/plaintiff should be construed as a tort-feasor and accordingly, the suit is liable to be rejected.

10. The Trial Court considered whether such an accident was due to the negligence on the part of the person, who suffered loss or even if that accident was shown not due to negligence on the part of the person or the institution carrying on such business.

11. The claim for compensation was based on the principle of 'strict liability', the appellant/plaintiff need not plead and prove that the accident was due to any negligence on the part of the respondents/defendants. Even in such cases, the defendants for claiming compensation, are able to establish that the accident had taken place not due to any negligence on the part of the Tamil Nadu Electricity Board, still the appellant/plaintiff is not entitled for compensation.

12. Relying on the judgments, the Trial Court arrived a conclusion that the appellant/plaintiff is entitled for compensation. However, while fixing the quantum, the Trial Court considered the documents filed in Exs.A-6 and A-7 and more specifically, the Trial Court formed an opinion that the medical expenses met out by the appellant/plaintiff as per document Ex.A-6 is also covered under the medical bills filed in Ex.A-7. In other words, some of the medical bills and the amounts specified were already covered under Ex.A-6 document and therefore, the same were treated as a double claim and accordingly, reduced the compensation amount to Rs.3,75,000/-.

13. The learned counsel appearing on behalf of the appellant/plaintiff contended that the appellant/plaintiff is aged about 27 years and was actively performing agriculture activities. The severe burn injuries caused certain permanent

disability to the appellant/plaintiff. It caused loss of future life and the appellant/ plaintiff is continuously suffering from various ailments on account of severe burn injuries, which affected the body of the appellant/plaintiff. The Trial Court has not considered the age of the appellant/plaintiff and further not considered the future life and the disability caused on account of severe burn injuries, which happened on account of the negligence on the part of the defendants-Electricity Board.

14. This Court is of the considered opinion that when the fact regarding the accident was admitted by the parties to the suit and the person, who sustained grievous burn injuries at the time of accident was aged about 27 years and such burn injuries caused certain disability in the body of the appellant/plaintiff, then the Trial Court ought to have considered the award of compensation for loss of future life and other inabilities sustained on account of severe burn injuries.

15. Undoubtedly, a person sustained severe burn injuries may not be in a position to perform his activities efficiently and the same is to be construed as disability to some extent. Disfiguration of skin or body is also concern for such a person. All these aspects would cause not only future issues and the appellant/plaintiff in this case, being a young person, will get affected on account of all these consequences. The Trial Court weighed only the medical bills, however not considered all these consequential results occurred on account of such grievous burn injuries.

16. As far as negligent part is concerned, this Court is of the considered opinion that though precautionary measures were taken by the defendants-Electricity Board, the fact remains that the transformer burst out and sprinkled hot oil. Such an incident itself is to be construed as a lapse on the part of the authorities, though not negligent. Whether it is a lapse or negligent, the same was not established by the defendants before the Trial Court.

17. Even in case of negligence, undoubtedly, the appellant/ plaintiff would be entitled for more damages. Even in case of lapse, the admitted fact regarding the burst of transformer and spilling out the hot oil, which caused burn injuries to the passers-by is also to be considered. In either event, this Court has to arrive a conclusion that the person, who sustained grievous burn injuries is entitled for compensation. However, burst of a transformer is not a normal affair. The burst of a transformer is an unusual one, which may occur on account of negligence or may be on some circumstances. However, these aspects cannot be considered in the appeal suit, as there is no evidence established by the

defendants/Electricity Board before the Trial Court regarding the cause for such accident.

18. The defendants/Electricity Board, except by stating that they had already given necessary warnings to the persons nearby the spot place, they had not taken any adequate precautionary measures to remove those persons from the spot place where the transformer was installed. Even that aspect is to be construed as an negligent on the part of the Electricity Board authorities.

19. Mere information to the public is not sufficient. The authorities, while executing such electricity related works, must ensure that no person is standing nearby the vicinity, while the works are in progress. Therefore, necessary warnings were given to the public to move from the spot place where the transformer was installed, cannot be a ground to deny compensation to the victim, who sustained grievous burn injuries on account of the burst of transformer in the village.

20. This being the possible circumstances, the admitted facts alone are to be considered for the purpose of grant of compensation in this case as these technical details or reasons were neither established nor adjudicated. However, the probabilities alone can be drawn by this Court and even on that ground, it is to be construed that there was an amount of negligence and lapse on the part of electricity authorities in not ensuring that the public are cleared from the locality, wherein the transformer is installed, while at the time of energising the transformer.

21. This being the facts and circumstances, this Court is inclined to enhance the compensation. Admittedly, the appellant/ plaintiff sustained grievous burn injuries and was aged about 27 years and at the time of accident, which resulted in loss of future life and caused certain amount of disability for effective and efficient performance of his routine works as well as agriculture activities.

22. Accordingly, the compensation amount of Rs.3,75,000/- is to be enhanced. The Trial Court awarded a sum of Rs.2,00,000/- towards medical expenses incurred by the appellant/ plaintiff and Rs.25,000/- was added and in total, awarded Rs.2,25,000/- towards medical expenses. Rs.50,000/- was awarded for pain and suffering and under these heads, this Court is not inclined to modify the judgment of the Trial Court. However, as far as the permanent disability and loss of income suffered by the appellant/ plaintiff due to 60% deep burn injuries tendered in the admitted accident is to be enhanced.

23. Though the Trial Court considered the age of the victim, which is 27 years and further, acknowledged the seriousness of the burn injuries, that is to say 60% deep burn injuries, awarded Rs.1,00,000/- towards compensation. As far as the award of Rs.1,00,000/- is concerned, the same is inadequate and not in proportionate with the gravity of the injuries sustained as well as the age of the person is concerned.

24. Accordingly, this Court is inclined to enhance the award amount from Rs.1,00,000/- to Rs.2,00,000/-. Thus, the respondents/defendants are directed to pay a total compensation amount of Rs.4,75,000/- to the appellant/plaintiff, within a period of eight weeks from the date of receipt of a copy of this judgment. If the respondents/defendants have already deposited any amount before the Court concerned, then the respondents/defendants are permitted to withdraw the said amount with accrued interest. However, the respondents/defendants need not wait for the withdrawal of the deposited amount and settle the compensation, as the accident took place during the year 2005 and already 14 years have elapsed. Thus, the respondents/defendants are directed to pay the enhanced amount of Rs.4,75,000/- to the appellant/plaintiff, within a period of eight weeks from the date of receipt of a copy of this judgment along with interest at the rate of 9% per annum from the date of filing of the suit till the date of payment.

25. Accordingly, the judgment and decree passed by the learned Principal District Judge, Cuddalore in O.S.No.50 of 2006 dated 05.04.2007 is modified and consequently, the present Appeal Suit stands allowed partly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Principal District Judge,
District Court,
Cuddalore.

2.Junior Engineer,
Rural West,
Tamil Nadu Electricity Board,
Pathirikuppam.

3.The Superintending Engineer,
Cuddalore Electricity
Distribution Circle,
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Nethaji Road,
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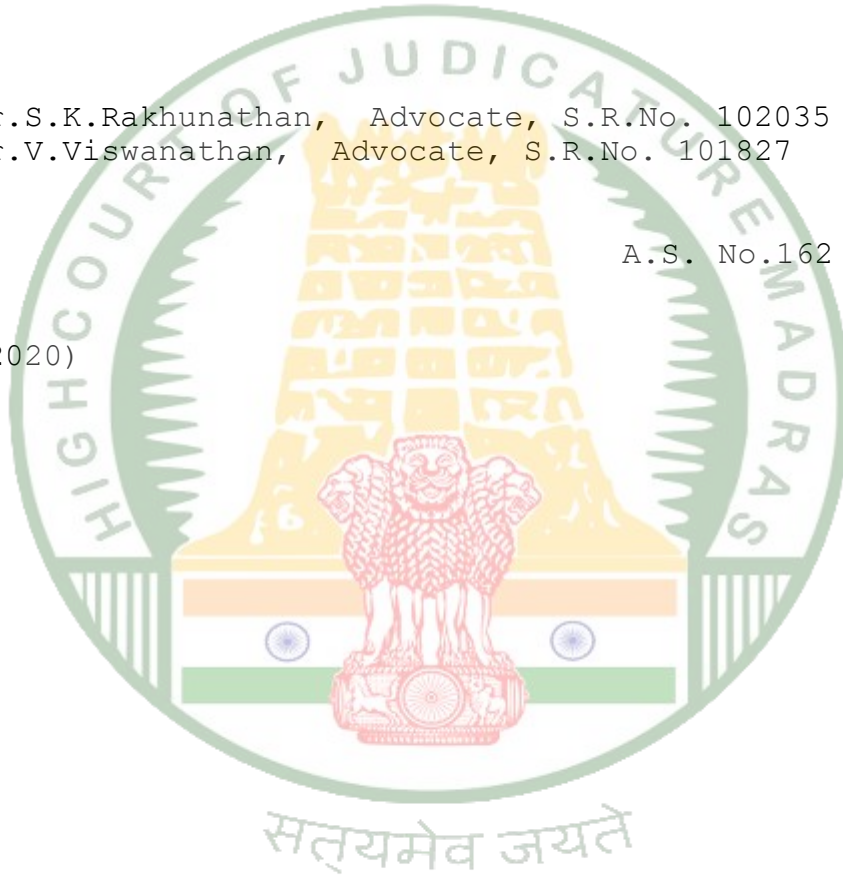
Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No. 102035
+1cc to Mr.V.Viswanathan, Advocate, S.R.No. 101827

A.S. No.162 of 2014

SVI (CO)
GN(22/09/2020)



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