



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2020

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THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD) No.196 of 2020

and

C.M.P. (MD) No.2768 of 2020

Tamil Nadu Water Supply and Drainage Board,
Tuticorin,
Through its the Executive Engineer,

.. Appellant/Appellant/
4th Defendant

Vs.

1.Subramanian

2.Pitchammal

3.Thampuratti

4.Petchiammal .. Respondents/Respondents 1 to 4/
Plaintiffs

5.State of Tamil Nadu,
Through District Collector,
Tuticorin.

6.The President,
Muruppanadu Kovilpathu Panchayat,
Muruppanadu,
Now Represented by Secretary.

7.TNEB through its Chairman,
Chennai.

8.The Junior Engineer,
TNEB Vallanadu,
Srivaikundam Taluk,
Thoothukudi District. .. Respondents/Respondents 5 to 8/
Defendants 1 to 3 & 5

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.46 of 2019 dated 30.10.2019 on the file of the learned District Judge, Tuticorin confirming the Judgment and



decree passed in O.S.No.135 of 2017 dated 24.07.2017 on the file of the learned Subordinate Judge, Tiruchendur.

For Appellant

: Mrs.Porkodi Karnan

For Respondents 5 and 6

: Mrs.V.P.M.Vaishnavi,
Government Advocate

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JUDGMENT

By consent, the second appeal is taken up for final disposal at the admission stage itself.

2.Heard Mrs.Porkodi Karnan, learned counsel appearing for the appellant and Mrs.V.P.M.Vaishnavi, learned Government Advocate appearing for the respondents 5 and 6.

3.This appeal is filed against the Judgment and Decree passed in A.S.No.46 of 2019 dated 30.10.2019 on the file of the learned Principal District Judge, Tuticorin confirming the Judgment and decree passed in O.S.No.135 of 2017 dated 24.07.2017 on the file of the learned Subordinate Judge, Tiruchendur.

4.The appellant herein is the 4th defendant, the respondents 1 to 4 herein are the plaintiffs and the respondents 5 to 8 herein are the defendants 1 to 3 and 5 in the suit. The respondents 1 to 4 herein have filed a suit in O.S.No.59 of 2009 before the learned District Judge, Thoothukudi for a prayer of compensation of Rs.5,01,000/- (Rupees Five Lakhs and One Thousand only) for the death of one Iyappan @ Manikandan and that the same was transferred to the Sub Court, Tiruchendur and was re-numbered as O.S.No.135 of 2017. The Trial Court decreed the suit. Against which, the appellant herein has filed an appeal in A.S.No.46 of 2019 and that appeal was dismissed by the learned Principal District Judge, Tuticorin. Against which, the appellant has filed the present second appeal.

5.The brief substance of the plaint is as follows:

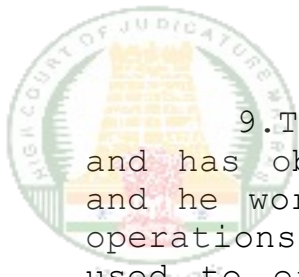
The plaintiffs are the legal heirs of Iyappan @ Manikandan, who died by electrocution on 02.05.2009 in the Thamirabarani River passing between Vallanadu and Morappanadu. The deceased was a native of Vallanadu village. The 4th defendant has dug several infiltration wells for supplying drinking water to the nearby villages and cities under the control of the first defendant. The water filtered and collected in the said infiltration wells is pumped to the concerned villages and cities through pipe lines with the electric motors installed by the 4th defendant, which are powered by the electrical energy supplied by the defendants 3 and 5.



6. One such well dug by the 4th defendant for the benefit of the villagers of Murappanad Koilpattu Panchayat is under the control of the defendants 1 and 2. The electrical power supply to the motor was taken from the electrical power supply room installed on the southern side banks of Tamiraparani River within Murappanad village limits. The electricity was supplied by the defendants 3 and 5 through the Service connection No.649 by the office of the 5th defendant.

7. The electrical supply was taken through underground cables beneath the flowing of water in the river. The electrical supply cables were found above the ground level and that no safeguard was taken to prevent damages to those cables. The switch controlling the supply of electricity to the motor in the infiltration well was provided in the Electrical Power Supply Room installed on the southern bank of the river. In case of emergency, the Electric Power Supply can be switched off either by crossing the river stream for 500 m or by crossing the village by road and through Thoothukudi to Tirunelveli National Highways across the river and thereby entering the Murappanadu village which is nearly 5 k.m. In either way, the electricity supply to the motor in the infiltration well can be disconnected only after a minimum time of 10 minutes by reaching the electricity power supply room by crossing the river. If the water level is increased by the floods, the said room can be reached only through the road by travelling 5 k.m. The motor requires three phase electric connection. The 4th defendant installed the motor in a negligent manner without providing a circuit breaker near the motor so as to disconnect the supply in case of emergency.

8. The deceased was the sole bread winner of his family and he was aged about 27 years at the time of accident. On 02.05.2009 at about 08.00 p.m., when he took bath with his relative in the Tamiraparani river banks on the side of Vallanadu near Agaram Lakshmi Narayanan Temple, electric current passed through the water and the deceased Iyappan @ Manikandan and his relative Swaminathan suffered electric shock. The said Swaminathan jumped out of the river immediately. The deceased fell into the river. The cables connecting electric motor on the other side of the river beneath the water, was found damaged and that was the reason for the electricity passing through the river. The switch to disconnect electricity was on the other side of the bank and it could not be switched off immediately. Morapanadu police registered a case in Crime No.129 of 2009 under Section 174 Cr.P.C., and found that the deceased Iyappan @ Manikandan died due to electrocution due to the passing of electric current in the river water.



9.The deceased had undergone Electrical Vocational Training and has obtained a certificate and he was doing domestic wiring and he worked as a Sub Contrator. He was also doing agriculture operations and he worked as a coolie during his free time and he used to earn Rs.25,000/- (Rupees Twenty Five Thousand only) per month. The plaintiffs are entitled for a compensation of Rs.34,00,000/- (Rupees Thirty Four Lakhs only) but they restricted their claim to Rs.5,01,000/- (Rupees Five Lakhs and one Thousand only).

10.The brief substance of the written statement filed by the defendants 3 and 5 is as follows:

There was no condition president to install an electric breaker for getting a E.B. Connection. The electric motor was in the care and custody and in the maintenance of the second defendant. The second defendant alone is responsible for maintaining the wires and the apparatus and that this defendant is not responsible for the accident.

11.The defendants 1, 2 and 4 were set exparte before the Trial Court. Two witnesses were examined as P.W.1 and P.W.2 and eight documents were marked as Exs.P1 to P8. Court documents were marked as Exs.C1 and C2. No witness was examined and no document was marked on the side of the defendants. After considering the materials available on record, the Trial Court has awarded a sum of Rs.5,01,000/- (Rupees Five Lakhs and One Thousand only) as compensation to the plaintiffs. Against which, the 4th defendant preferred the first appeal on the following grounds:

The maintenance of well and the motor room was not under the control of the 4th defendant and that the appellant was not liable to pay any compensation.

12.The first Appellate Court after hearing both sides, dismissed the appeal. Against which, the appellant preferred this second appeal on the following grounds:

The appellant herein is responsible only for the implementation of a scheme and that the maintenance of the project was handed over to the second defendant, Panchayat and that the appellant was not liable for the maintenance of the electric supply and that the deceased died only due to the negligence of the second defendant.

13.This Court has framed the following substantial questions of law, which are as follows:

"(i) Whether the Courts below are correct in holding the liability upon the 4th defendant when the maintenance of the project is totally in the hands of the second defendant ?



(ii) When the appellant herein is also a Government entity, whether the Courts below are correct in dismissing the suit for non issuance of notice under Section 80(1) of CPC with regard to the first defendant alone without giving the benefit to the appellants/4th defendant ?

(iii) Whether the suit is maintainable as against the appellant/4th defendant without issuance of mandatory notice under Section 80 of CPC ?

Issue No.1:

14. The case of the appellant is that the maintenance of the project is totally in the hands of the second defendant and the 4th defendant is not liable to pay compensation. It is stated that the 4th defendant is responsible only for the implementation of scheme and not for the maintenance of the project.

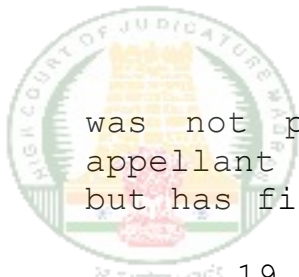
15. The case of the plaintiffs is that the electricity passes through the river water and the deceased died due to electrocution. It is seen that the no circuit breaker was installed to cut off the electric supply from that side of the river bank and that a fuse carrier should have been installed to cut off electricity immediately in case of emergency. Admittedly there was no fuse breaker available, when the electricity passed through river. It was duty of the 4th defendant to provide fuse breaker, when the project scheme was implemented. In the Commissioner report, it was clearly stated that wires were in a damaged condition. The Commissioner report reveals that the 4th defendant did not provide quality wires.

16. It is seen that in case of emergency, the electricity can be disconnected only after 10 minutes by crossing road. The defendants while implementing the scheme, failed to take steps to cut off electricity immediately in case of emergency. In the above circumstances, there is nothing wrong in the decision of the trial Court in fixing the liability upon the 4th defendant.

Issue Nos.2 and 3:

17. The case of the appellant is that the case against the 1st defendant was dismissed by the lower Court for non issuance of the notice under Section 80(1) of Cr.P.C., but that benefit was not extended to the 4th defendant. The fourth defendant is only a Board, which cannot be named as a Government Department. In such circumstances, notice under Section 80(1) of Cr.P.C., is not mandatory.

18. The 4th defendant without filing any written statement before the trial Court, has filed first appeal without any valid grounds and has preferred this second appeal also. An issue, which



was not pleaded cannot be raised in the second appeal. The appellant has not taken any steps to set aside the exparte decree but has filed a first appeal and then the second appeal.

19.The plaintiffs lost their family member and the deceased Iyappan @ Manikandan died without any negligence on his part. By filing this appeal, the appellant is preventing the plaintiffs from getting compensation. The questions raised by the appellant are not sustainable. There is no merits in the second appeal and there is nothing sufficient enough to interfere in the judgment and decree of both the lower Courts. The appellant is directed to deposit the amount due for the claimants without causing further delay.

20.This Second Appeal is dismissed and the judgment and decree passed in A.S.No.46 of 2019 dated 30.10.2019 on the file of the learned Principal District Judge, Tuticorin confirming the Judgment and decree passed in O.S.No.135 of 2017 dated 24.07.2017 on the file of the learned Subordinate Judge, Tiruchendur is hereby confirmed. No Costs. Consequently, C.M.P.(MD)No.2768 of 2020 is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

Mrn

To

1.The Principal District Judge, Tuticorin.

2.The Subordinate Judge, Tiruchendur.

3.The V.R.Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.PORKODI KARNAN, Advocate (SR-11719[F] dated 13/03/2020)

+1 CC to M/s.SPL.GP (SR-11803[F] dated 16/03/2020)

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13.03.2020

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