

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No.329 of 2013

JUDGMENT:

This appeal, under Section 96 of the Code of Civil Procedure, 1908 ('CPC'), is filed by the appellants/defendant Nos.1 to 3, challenging the judgment and decree dated 05.11.2012 passed in O.S.No.50 of 2007 by the Chairman, Motor Accident Claims Tribunal-cum-Special Sessions Judge, for trial of SCs/STs (POA) cases-cum-Additional District Judge, Nalgonda, whereby, the suit filed by the respondents 1 to 3 herein/plaintiffs against the appellants herein/defendants 1 to 3 and respondents 4 to 6 herein/defendants 4 to 6, for grant of compensation on account of the death of Sri V. Rathan Lal (hereafter referred as 'deceased') was partly decreed, granting compensation of Rs.10,01,000/- to the plaintiffs payable by the defendants 1 to 5 jointly and severally along with interest @ 7.5% per annum from the date of filing of the suit, till the date of realisation.

2) The appellants herein are the defendants 1 to 3, the respondents 1 to 3 herein are the plaintiffs, the respondents 4 to 6 herein are the defendants 4 to 6 in O.S.No.50 of 2007 before the Court below. The respondent No.7, who is the mother of deceased-Rathan Lal, is brought on record vide order dated 17.08.2016 passed by this Court in A.S.M.P. No.2059 of 2015. Hereinafter, the parties will be referred as they were arrayed before the Court below.

3) Heard Sri R.Vinod Reddy, learned counsel for the appellants/defendants 1 to 3, Sri P.S.P.Suresh Kumar, learned counsel for respondent No.1/plaintiff, Sri Karnam Ramesh, learned counsel for the respondent No.7 and perused the record. Respondent Nos.2 and 3/plaintiffs are represented by their mother and natural guardian-respondent No.1. Notice to respondent Nos.4 and 5 returned unserved with an endorsement "insufficient address". In spite of service of notice on respondent No.6, there is no representation on its behalf.

4) Learned counsel for the appellants/defendants 1 to 3 would contend that the appellants' electricity board is no way concerned with the death of the deceased. There is no evidence to prove the death of the deceased by electrocution. Even if it is admitted that the electricity passed through cable wire to the television and caused the subject death, the appellants cannot be held responsible for the death of the deceased. There is no negligence on the part of the appellants. The Court below is unjustified in holding the issue Nos.1 to 3 i.e, whether the deceased-Vankunavath Rathan Lal died due to electrocution and negligence of the defendants; whether the defendants are liable to pay compensation and whether the plaintiffs are entitled for recovery of damages and compensation of Rs.10,01,000/- from the defendants, in favour of respondents/plaintiffs. It is further contended that the Court below erroneously calculated the compensation and granted excessive compensation and ultimately prayed to set aside the impugned judgment and decree passed by the Court below and allow the appeal.

5) On the other hand, learned counsel for the respondent No.1/plaintiff would contend that the Court below is justified in passing the impugned judgment and decree basing on the oral and documentary evidence on record. There is no legal infirmity in the judgment under challenge to take a different view and ultimately prayed to dismiss the appeal.

6) Learned counsel for the respondent No.7 would contend that since the respondent No.7-Vankunavath Ambali, is the mother of the deceased, she is also entitled for compensation along with respondent Nos.1 to 3/plaintiffs. But the respondent Nos.1 to 3/plaintiffs deliberately did not make her a party to the subject suit and sought the compensation. The respondent No.7 is impleaded in this appeal vide orders dated 17.08.2016 passed in A.S.M.P.No.2059 of 2015. The contentions raised on behalf of the appellants are unsustainable and ultimately prayed to dismiss the appeal by varying the compensation granted in favour of the respondent Nos.1 to 3/plaintiffs and allocate just and reasonable compensation to the respondent No.7.

7) In view of the submissions made by both sides, the following points have come up for determination in this appeal:

- 1) Whether the deceased-V.Rathan Lal died due to electrocution and negligence of the defendants?*
- 2) Whether the Court below is justified in granting compensation of Rs.10,01,000/- to the respondents/plaintiffs 1 to 3?*
- 3) Whether the respondent No.7, who is said to be the mother of the deceased, is entitled for apportionment of compensation?*

*4) Whether the judgment and decree dated 05.11.2012 passed in O.S.No.50 of 2007 by the Chairman, Motor Accident Claims Tribunal-cum-Special Sessions Judge, for trial of SCs/ STs (POA) cases-cum-Additional District Judge, Nalgonda, is liable to be set aside?*

8) POINT Nos.1 to 4: It is contended on behalf of the appellants that the appellants' electricity board is no way concerned with the death of the deceased and since there is negligence on the part of respondent Nos.4 and 5/defendant Nos.4 and 5, they are alone liable to pay the compensation. The respondents 1 to 3/plaintiffs 1 to 3 got examined PW.1-Vankunavath Jyothi, wife of the deceased-V.Rathan Lal, PW.2-Kamire Srinivas, eye witness to the incident and PW.3-Jajala Chandrakala, one of the victim, and got marked Ex.A.1-Certified copy of FIR in Crime No.50 of 2006 of P.S Dindi, Ex.A.2-Certified copy of Inquest report, Ex.A.3-Certified copy of post-mortem examination report, Ex.A.4-Office copy of legal notice dated 24.08.2006, Ex.A.5-Postal receipts (6 Nos.), Ex.A.6-Acknowledgment cards (6 Nos.), Ex.A.7-Certified copy of charge sheet in Crime No.50 of 2006 and Ex.A.8-Last pay certificate of the deceased, to prove that the deceased-V.Rathan Lal, died due to electrocution. There is specific mention under Ex.A.3-postmortem examination report that death of the deceased was due to shock by electrocution. There is consistency with regard to this in the oral evidence adduced on behalf of respondents/plaintiffs. PWs.1 and 2 are not the direct witnesses to establish how the electrocution has taken place. As per the evidence of PW.1, when the deceased was trying to remove the cable

connection from the Television set, he was struck with electric shock, fell unconscious and was immediately shifted to hospital, where he was declared dead. Further, there is also evidence on record to establish that the cable wire connected to the television set had come in contact with the live electric wire belonging to the appellants' Board. There was negligence on the part of the appellants/defendants, as they have not taken adequate care to avoid such type of happenings. So also, the respondents 4 and 5/defendants-cable operators are equally negligent, as they failed to take steps to separate the cable wire from the live electric supply wire. In view of the negligence of the appellants/defendant Nos.1 to 3 and the respondents/defendant Nos.4 & 5, the Court below was right in holding that the defendants 1 to 5, are jointly responsible for the death of the deceased. The findings recorded by the Court below are based on oral and documentary evidence on record.

9) As seen from the evidence on record, the wife of the deceased (PW.1) was given compassionate appointment as Junior Assistant in ZPHS, Vellemla of Narketpally Mandal. Ex.A.8-Last pay certificate of the deceased substantiates the salary of the deceased and other documents reveal the occupation of deceased as Government teacher. The Court below took the annual income of the deceased, deducted 1/3<sup>rd</sup> of it towards personal expenses, applied multiplier '16' , and arrived at a total compensation of Rs.13,44,000/-. However, since the claim was only Rs.10,01,000/-, the Court below restricted the compensation payable to Rs.10,01,000/-. Therefore, it cannot be said that the

compensation granted by the Court below is excessive. There is no dispute that the respondent No.7 is not the mother of the deceased-Rathan Lal. The respondents 1 to 3/plaintiffs 1 to 3 deliberately avoided to make her a party to the subject suit. They ought not have done so. They ought to have made her also as one of the party to the subject suit. Though there is no cross appeal from her side, the respondents 1 to 3/plaintiffs 1 to 3 have not filed counter, challenging the claim of the respondent No.7. Even the respondents 1 to 3/ plaintiffs 1 to 3 did not chose to contest that respondent No.7 is not the mother of the deceased. Under these circumstances, it is held that the respondent No.7 is the mother of the deceased and she is entitled for compensation along with the respondents 1 to 3/plaintiffs 1 to 3. Therefore, the apportionment of the total compensation of Rs.10,01,000/- granted in favour of the respondents 1 to 3/plaintiffs 1 to 3 is modified as follows:

- (i) Respondent No.1/plaintiff No.1 is granted Rs.5,51,000/-,
- (ii) Respondent No.2/plaintiff No.2 is granted Rs.1,50,000/-,
- (iii) Respondent No.3/plaintiff No.3 is granted Rs.1,50,000/-,
- (iv) Respondent No.7, mother of the deceased is granted Rs.1,50,000/-.

It is made clear that respondent Nos.1 to 3 herein/plaintiff Nos.1 to 3 as well as respondent No.7-V.Ambali, mother of the deceased, are entitled for interest as granted by the Court below i.e, @ 7.5% per annum from the date of filing of the suit, till the date of realisation, on their respective shares.

10) Subject to the modification in the allotment of shares to the respondent Nos.1 to 3/plaintiff Nos.1 to 3 and respondent No.7 as indicated above, this appeal is dismissed.

Miscellaneous Petitions, if any, pending in this Appeal shall stand closed. No order as to costs.

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Dr. SHAMEEM AKTHER,J

Date: 23<sup>rd</sup> January, 2020.  
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