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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.02.2021

Pronounced on :10.02.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Appeal Suit No.23 of 2016

and

C.M.P.No.763 of 2016

1.The Chairman,
Tamil Nadu Electricity Board,
K.R.P.Maligai, Chennai.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Distribution Circle,
Dharmapuri-6.

3.The Assistant Engineer,
Tamil Nadu Electricity Board, (O&M),
Morappur, Harur Taluk,
Dharmapuri District.

4.The Junior Engineer,
Tamil Nadu Electricity Board (O&M),
Morappur, Harur Taluk, Dharmapuri District.

..Appellants /
1 to 4 Defendants

/versus/

1.Kogila
W/o late Kumaran

2.Minor Kavinkumar
S/o late Kumaran

3.Minor Navinkumar
S/o Late Kumaran



4.Mariammal

(Minors 2 and 3 represented by its Next friend
mother-1st Respondent/1st plaintiff Kogila) ..1 to 4 Respondents/
Plaintiffs

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5.The State of Tamil Nadu represented by its
District Collector, Collectorate, Dharmapuri. .. 5th Respondent/
5th Defendant

Prayer:- Appeal Suit has been filed under Section 96 of
the Civil Procedure Code, 1908 against the judgment and decree
dated 27.03.2014 in O.S.No.53 of 2011 on the file of the
Subordinate Judge at Harur.

For Appellants : Mr.V.Viswananthan

For Respondents : Mr.M.Raju Sekhar for R1 to R3
No appearance-R4 & R5

J U D G M E N T

The appellants before this Court are the defendants in
O.S.No.53 of 2011 on the file of the Subordinate Court, Harur,
being aggrieved by the decree passed against them in the suit
for damages filed by the legal heirs of Kumaran, who died due to
fall of electrical pole on him, this first appeal is filed.

2.The suit claiming damages of Rs.10,00,000/- was filed
on the premise that on 17/12/2010 at about 7.00 pm, when the
deceased Kumaran resident of Pananthoppu Village, Harur Taluk,
Dharmapuri District, was standing near the house of one Madesh
and talking to him, the electrical pole ill-maintained by the
defendants, broke and fell on Kumaran. He was severely injured
beside electrocuted. He died on his way to hospital. Post mortem
report says that he died due to electrical shock and vital organ
injuries.

3.Plaintiffs 1 to 4 are the wife, two minor children and
the mother of the deceased respectively. The suit under Order
XXXIII as "informa pauperis" filed by them after causing notice
alleging that the fall of electrical pole was due to poor
maintenance and negligence on the part of the defendants. For
the loss of their Kartha Kumaran, defendants 1 to 4 are liable



to compensate his dependants/legal heirs, who are the plaintiffs in the suit.

4. Defendants 1 to 4 are the officials of TamilNadu Electricity Board, defendants in their written statements denying the liability, contented that, the incident occurred due to the voluntary act of the deceased. On 17/12/2010, there was power failure in the house of the deceased. The deceased under inebriated mood opened the transformer box, climbed the electrical pole and fell down. In this regard complaint to the Morrapur Police Station was lodged by the Electricity Board Agent Sekar against Kumaran for tampering the transformer and for causing damage to the electricity board property worth Rs.10,000/-. The death of said Kumaran was not due to the negligence or poor maintenance of the electrical pole by the defendants. Contrary to the truth, based on the false complaint given by Murugan the brother of the deceased, The Morrapur Police has registered case in Cr.No.324/2010 under Section 174 Cr.P.C and the case under investigation.

5. The trial Court framed the following issues :

- 1) Whether the plaintiffs are entitled to the suit claim amount ?
- 2) Whether the plaintiffs are entitled to the relief of damages ?
- 3) Whether the plaintiffs are entitled to the relief of damages for the negligence caused by the defendants ?
- 4) To what relief ?

6. For the plaintiffs, the first plaintiff deposed as PW-1 and in support of her case, PW-2 to PW-4 were examined. Ex.A1 to Ex.A-10 were marked in support of the suit claim. For the defendants, three witnesses and four exhibits Ex.B-1 to Ex.B-4 relied.

7. The trial Court held that the damaged electrical pole fell on the deceased due to poor maintenance and negligence of the defendants. Therefore, held the defendants liable to pay the suit claim of Rs.10lakhs with 6% interest.

8. The appellants assail the judgment of the trial Court on the ground that the Court below failed to properly appreciate the evidence. The villagers damaged the pole and made out a



false case as if the pole fell on Kumaran and caused his death. Ex.B2, the letter of Madeshwaran disproves the case of the claimants that the pole fell on the deceased when he was talking with Madeshwaran. In Ex.B-2, Madeshwaran has categorically stated that he has no knowledge about the incident and he was not present along with the deceased at the time of incident.

9.The learned counsel for the appellants submitted that, the trial Court, without proper appreciation of evidence, erroneously held the negligence on the part of the defendants. Also without adequate evidence regarding the quantum of damages, the trial Court had erred in awarding Rs.10,00,000/- as compensation with 6% interest. The quantum of compensation is highly excessive, when there is no iota of evidence to show that the plaintiffs are dependants of Kumaran and his death has caused pecuniary loss to the plaintiffs.

10.The learned counsel appearing for the respondents submits that the case against the appellants is well proved by the plaintiffs through eye witnesses and photographic evidence. Ex.A-10 photos and CD clearly show that the pole was heavily damaged. One could also to see the iron rods exposed and rusted. The cement concrete covering peeled off. The broken electrical pole on the ground with live wire seen in the photographs speak for itself. The hearsay evidence of DW-1 to DW-4 rightly disbelieved by the trial Court. In the post mortem report Ex.A-9, the Doctor PW-3 has opined that the death was due to electrical shock and vital organ injuries. The deceased sustained head injury, fracture of his ribs and damage to spleen due to the fall of heavy electric pole. He was also electrocuted. The appellants officials came to the spot much later had created documents such as inspection report and CSR so as to cover up their dereliction of duty and improper maintenance of the electrical pole. Despite several oral complaints by the residents of the village for a long time, the defendants failed to change the pole. Hence, the compensation awarded by the trial Court is fair, just and in tune with the judgments rendered in following cases:-

- 1) Chairman, M.P. Electricity Board -vs- Smt. Gindiabai : 1999(1) MPLJ 587;
- 2) Thangavel and another -vs- The Superintending Engineer, O/o the Electricity Board, East Main Road, Pudukottai Town and



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District: (2017)2 LW 332;
3)Jaspal Kaur Cheema and another -vs- M/s
Industrial Trade Links and others: AIR
2017(SC) 3995.

11.On considering the rival submissions and the records, the following point for determination is formulated:

Whether the trial Court finding on negligence and fixation of liability upon the appellants is supported by adequate evidence. If yes, whether the quantum of damages awarded is fair and reasonable ?

12.The plaintiffs through First Information Report Ex.A-7 and through the PW-2 the Sub-Inspector of Police had established that Kumaran sustained injury due to fall of electrical pole and later died. PW-4, is the eye witness, who has deposed about the incident. These evidence are corroborated with the post mortem certificate Ex.A-9 and the evidence of PW-3. Beside, the photographs Ex.A-10 clearly reveals that the electrical pole broke at the point, where it is damaged peeled of cement plaster and rods exposing. The very factum that the pole broke and fell to ground indicates that the pole was not properly pegged and the damage to the pole was not attended in time. There is no evidence to accept the case of the defendants that the deceased fell on the ground while claiming the standing pole. There own evidence, Ex.B-4 reveals that the pole fell down and the staff of EB working on it to replace. In the cross examination of the defence witness, it is admitted that they replaced the damaged pole after few days. The letter of Madeshwaran Ex.B-2 relied on by the defendants indicates that for more than 10 days the village was cut from power supply hence a letter has been obtained from Madesh for restoration of power supply. In this letter to self serve their purpose, the defendants have obtained a disclaimer from Madesh that he was not aware of the incident and not present along with the deceased at the relevant time. This only lead to adverse inference against the appellants. They have created evidence Ex B-2 and Ex B-3 CSR to show as if the electrical pole was in good condition and it was the deceased and the villagers caused damaged to the pole. It is pertinent to note that when the plaintiffs caused notice Ex.A-1 through their lawyer, the defendants after receipt of it did not reply. The



defence taken in the written statement and the evidences relied by them during the trial are only an afterthought.

13. Thus, the plaintiffs have proved the negligence on the part of the defendants/appellants through oral and documentary evidence. The trial Court after due appreciation of the evidence has rightly held, the appellants/defendants are liable to pay damages for the death of Kumaran.

14. Regarding the quantum of compensation, the dependency of the plaintiffs is established through the family ration card Ex.A-4 and Legal heir certificate Ex.A6. It is correct to say that there is no evidence regarding the earning capacity of the deceased or his income. The trial Court has not given any plausible reasons for accepting the suit claim of Rs.10 lakhs, except saying that the plaintiffs have filed the suit as *informa pauperis*. Therefore, they are entitled for the suit claim.

15. This part of the trial Court judgment requires interference. Before fixing any liability to pay damages for negligence, the Court has to consider the factors like, age, income, future prospects, number of dependants and extent of dependency. For the said purpose, the structured formula given under the Motor Vehicles Act, provisions of Minimum Wages Act and Workmen compensation Act may be taken for guidance to arrive at just and fair compensation. The trial Court in the instant case has passed the decree as claimed without any plausible reasons.

16. Therefore, this Court taking into consideration the provisions of the welfare legislations mentioned above and the case laws referred by the plaintiffs/respondents' counsel and the other factors peculiar to the present case, fixes the damages as below:

17. The age of the deceased as per the post mortem report (Ex.A-9) was 35 years. No evidence placed before the Court to prove the income. As per the lawyer notice Ex.A-1 and the First Information Report (Ex.A-7), the deceased was an agricultural coolie. Hence, notional income of Rs.40,000/- per annum is fixed. The ration card and legal heir certificate indicates that as he is the head of the family, all the four plaintiffs were depending on his income. Therefore, it is to be presumed that he



would have contributed 2/3rd of his income to the family after spending 1/3rd for his personal expenses.

18.As per Second Schedule of Motor Vehicles Act, quantum of compensation for this slab is Rs.6,80,000/-, to this 40% is added towards future prospect. Thus the damages for pecuniary loss is arrived at (Rs.6,80,000 + Rs.2,72,000) - Rs.3,17,333 (1/3rd for personal expenses) = Rs.6,34,667/- rounded off to Rs.6,35,000/-. In addition for general damages like funeral expenses, loss of consortium and loss of estate, a sum of Rs.65,000/- is fixed taking into consideration the year of death.

19.In the result, the damages payable by the appellants/defendants to the respondents/plaintiffs is fixed as Rs.7,00,000/- with interest at the rate of 6% payable from the date of suit till the date of realisation.

20.From the order passed by this Court dated 29.01.2016, it appears that the appellants herein had already deposited a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of R.E.P.No.87 of 2014 in O.S.No.53 of 2011 on the file of the Sub Court, Harur. Further, it is admitted by the learned counsel for the respondents that a sum of Rs.6,00,000/- has already been withdrawn. If so, the balance amount to satisfy the decree in A.S.No.23 of 2006, if any, shall be deposited within a period of two months from today. In case, the amount already deposited is sufficient to satisfy the decree and any amount lying in excess in credit of R.E.P.No.87 of 2014, the same shall be withdrawn by the appellants.

21.The said amount shall be apportioned by the respondents/plaintiffs as below:

The first respondent/first plaintiff)

(wife of the deceased)): Rs 2,00,000 along
)with proportionate interest.

The 2nd and 3rd respondents/)

2nd and 3rd plaintiffs (children)

of the deceased) :Rs.4,00,000/- (Rs.2,00,000 each)
 along with proportionate interest.



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The 4th respondent/4th plaintiff)
(mother of the deceased)):Rs.1,00,000/- along with
proportionate interest.

22.Since the suit filed under Order XXXIII of the Civil Procedure Code, the Court fees is payable by the plaintiffs for the amount decreed.

23.In the result, this Appeal Suit is partly allowed with costs throughout. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Subordinate Judge,
Harur.

Copy To:

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

+1cc to Mr.V.Viswanathan, Advocate, S.R.No.7461
+1cc to Mr.M.Rajasekhar, Advocate, S.R.No.7233

A.S.No.23 of 2016
and
C.M.P.No.763 of 2016

SSI(CO)
SB(26/10/2021)