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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.02.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.852 of 2010

1.M.Muniappan(died) ..1st Appellant/Plaintiff
2.Lakshmi
3.M.Venkatachalam
4.Selvi ... Appellants 2 to 4

(Appellants 2 to 4 brought on record
LRs of the deceased sole appellant
viz., M.Muniappan vide Court order
dated 22.09.2021 made in
C.M.P.Nos.1 to 3 of 2015 in
A.S.No.852 of 2010)

.Appellants

versus

1.Tamil Nadu Electricity Board
rep.by its Superintending Engineer,
Salem Electricity Distribution Circle,
K.N.Colony,
Udayapatty, Salem 636 018.

2.The Junior Engineer(O&M),
Tamil Nadu Electricity Board,
Kondalampatty,
Salem 636 010.

..Respondents/Defendants

Prayer: Appeal Suit has been filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 23.06.2005 made in O.S.No.314 of 2004 on the file of the Additional District Court, Fast Track Court No.II, Salem, in so far as it is against Appellant.

For Appellants :M/s.K.Ponmani for
M/s Zeenath Begam

For Respondents :M/s Hemalatha Gajapathy



J U D G M E N T

This Appeal Suit is filed by the plaintiff, not being satisfied with the compensation awarded by the trial Court for the death of his son Inbasekaran electrocuted due to the negligence of the respondents/Electricity Board.

2. Brief facts of the case is that on 16.03.2004, when the son of the plaintiff went to his field to assist his father, he contacted live wire which was lying on the field of the plaintiff and got electrocuted. He was taken to Gokulam Hospital, Salem, but he was declared dead. After Post-Mortem, the body was handed over to the plaintiff and a case was registered by Kondalampatty Police Station. The plaintiff claiming that due to negligence of the defendants, the live wire got severed and it was lying on the field of the plaintiff. The plaintiff's son aged about 26 years came in touch with the live wire and died. Suit for recovery of Rs.10 lakhs as damages filed on the premises that the deceased was earning Rs.5000/- per month and the plaintiff, who is the father of the deceased was the dependent on him.

3. The defendants had filed a written statement contending that the live wire which the deceased contacted was not a high tension wire and it is only a 240 voltage wire and it got severed due to rain on the previous day. No electricity was passing through that severed wire. The deceased, who tried to remove the wire, had contacted the live wire passing above the head and got electrocuted. The incident had occurred only due to the negligence of the deceased and not due to the negligence of the defendants.

4. The trial Court has failed to frame the following issues:-

(i) Whether the incident had occurred due to the negligence of the deceased?

(ii) Whether the plaintiff is entitled for compensation?

(iii) What other relief the plaintiff is entitled to?

5. Before the trial Court, two witnesses were examined. In support of the plaintiff, 10 exhibits were marked. On the side of the defendants, one witness was examined and 7 exhibits were marked.

6. The trial Court, after considering the evidence, held that the death of the plaintiff's son was occurred due to electrocution and the electrocution was due to the negligence of



the defendants since they have not taken proper care to maintain the transformer. The live wire has fallen on the field of the plaintiff and the plaintiff's son, who came to the field of the plaintiff had contacted the live wire and got electrocuted. After fixed the negligence on the defendants regarding liability, the trial Court, considering the evidence, had notionally fixed the income of the deceased at Rs.100/- per day and deducted 1/3rd for his personal expenses and applied the multiplier "8" to fix the compensation and also awarded Rs.5000/- for funeral expenses and the money decree for Rs.1,97,000/- was awarded as compensation for the electrocution death of the 26 years old unmarried male.

7.In the appeal, the appellants had contended that the trial Court, while rightly held that the incident had occurred due to the negligence of the respondents, has not properly assessed the compensation. It should have adopted the multiplier "12", taking note of the age of the claimant and life expectation of the average Indian and therefore, adequate compensation by adopting the multiplier "12" has to be awarded. Further, it is also contended that, the income of the deceased Inbasekaran was fixed only at Rs.100/- per day, inspite of the fact that he was having adequate income through the agriculture activity and as a carpenter.

8.The learned counsel appearing for the respondents, per contra, submitted that the plaintiff had not produced any document to substantiate that the deceased had income over and above Rs.3000/- p.m. as fixed by the trial Court. Further, the fixation of multiplier "8" for awarding compensation is fair and adequate, since the age of the claimant was above 60 years and he also died pending appeal.

9.On considering the rival submissions, the point for consideration is that

(i)Whether the trial Court erred in applying the multiplier "8" to ascertain the quantum of compensation?

(ii)Whether the notional income of Rs.3,000/- fixed by the trial Court is inadequate?

10.The post-mortem report Ex.A3 indicates that Inbasekaran son of the plaintiff died due to electrocution. PW-1 and PW-2 are the witnesses to the incident and they have spoken about how the incident took place and their evidence would clearly show that due to the contact of the live wire, the plaintiff's son Inbasekaran was electrocuted. The contra evidence let in by the defendants that once there is severance



to live wire from the transformer, there will be an auto fuse and no electricity will pass through the severed wire, was rejected by the trial Court, since the respondents have not placed any evidence to substantiate the same. Having admitted that there was severance of wire from the transformer and the same was lying on the field of the plaintiff and there is evidence to show that the son of the plaintiff died due to electrocution on contacting the said wire, the trial Court has rightly come to the conclusion that the severance of live wire from the transformer is due to ill-maintenance of the transformer by the defendants.

11. In so far as the earning capacity of the deceased Inbasekaran, taking into consideration of his age and avocation as spoken by the witnesses, the trial Court has notionally fixed the income as Rs.3000/- per month and deducted 1/3rd of his income for his personal expenses being a bachelor.

12. The point in dispute is whether the multiplier should be based on the age of the claimant or age of the deceased? The trial Court has fixed the multiplier "8", based on the claimant's age. Whereas under the Motor Vehicles Act, 1988 and the decision of the Hon'ble Supreme Court, it is settled that the multiplier should be based on the age of the deceased and not the age of the claimant. If that principle is applied in this case, the multiplier "18" has to be applied as per judgement of Sarla Verma and others v. Delhi Transport Corporation and another reported in (2009)6 SCC 121 and the compensation should be arrived by applying multiplier "18". Though the appellants have sought for only multiplier "12", in view of the law laid down by the Hon'ble Supreme Court, this Court fixes the multiplier "18" and enhances the compensation as below:-

	Notional income	:Rs.3000/- p.m.
Add	Future prospect 40%	:Rs.1200/- p.m.
	Total	:Rs.4200/- p.m.
	Less Personal expenses 50%	:Rs.2100/- p.m.
	Multiplier	:18
	Sum Total (2100x12x18)	:Rs.4,53,600/-

Sl. No.	Compensation under various heads	Amount awarded by the trial Court Rs.	Amount awarded by this Court Rs.
1.	Loss of income (3000x12x1/3x8)	1,92,000-00	4,53,600-00
2.	Funeral expenses	5,000-00	5,000-00



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Sl. No.	Compensation under various heads	Amount awarded by the trial Court Rs.	Amount awarded by this Court Rs.
	Total	1,97,000-00	4,58,600-00

13.The respondents/Electricity Board are directed to pay a sum of Rs.4,58,600/- along with interest at the rate of 7.5% p.a.m from the date of incident, till the date of realization, within a period of eight weeks. Since pending appeal, the sole appellant died and his legal representatives of the deceased 1st appellant, appellants 2 to 4 have been brought on record, therefore, the decree amount shall be shared equally by appellants 2 to 4. Accordingly, appeal disposed. No order as to costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To:

1.The Additional District Judge,
Fast Track Court No.II, Salem.

Copy to:

1.The Superintending Engineer, Tamil Nadu Electricity Board,
Salem Electricity Distribution Circle, K.N.Colony,
Udayapatty, Salem 636 018.

2.The Junior Engineer (O&M), Tamil Nadu Electricity Board,
Kondalampatty, Salem 636 010.

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

+1cc to Mr.V.Rajesh, Advocate SR.No.11686

A.S.No.852 of 2010

AK (CO)
CB (04/07/2022)