



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 28 .01.2022

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THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

S.A. (MD) No.131 of 2019

A. Parimala

... Appellant/Appellant/
Plaintiff

vs.

1. The Chairman,
TNEB, 83, Mount Road,
Annasalai,
Chennai -2.
2. The Superintending Engineer,
TNEB, Manapuram,
Trichy- 20.
3. The Junior Engineer,
(Operating and Maintenance),
TNEB, Sirugambur Division,
Manachanallur Taluk,
Trichy District.
4. The District Collector,
Collector Office Road,
Trichy.

... Respondents/Respondents/
Defendants

Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 11.06.2018 passed in A.S. No. 40 of 2015 on the file of the Principal District Judge, Trichy confirming the judgment and decree dated 29.04.2015 passed in O.S. No.784 of 2010 on the file of the IV Additional Subordinate Judge, Trichy.

For Appellant : Mr.C.Vetrian

For Respondents : Ms. M.Parameswari
No.1 to 3 for Mr.S.M.S. Johnny Basha

No.4 : Mr.G.Suriya Ananth
Additional Government Pleader



JUDGMENT

This Second Appeal is directed against the judgment and decree dated 11.06.2018 passed in A.S. No. 40 of 2015 on the file of the Principal District Judge, Trichy, in confirming the judgment and decree dated 29.04.2015 passed in O.S. No.784 of 2010 on the file of the IV Additional Subordinate Judge, Trichy.

2. For the sake of convenience, the parties are referred to as described before the trial Court.

3. The case of the plaintiff, in brief, as per the averments made in the plaint, reads as follows:-

The case of the plaintiff is that on 01.12.2004 at about 9.00 pm., because of electric spark from the electric wire belonging to the defendants, the house of the plaintiff caught fire. The fire personnel visited the house and issued a certificate. The plaintiff has also registered a complaint before Vathalai Police Station regarding the incident. The younger daughter of the plaintiff was seriously affected with the multiple fire injuries and was admitted in the nearest private hospital, namely, Balaji Nursing Home, T.V.K.Kovil, Trichy for first aid and thereafter, she was treated in the Government Hospital, Puthur, Trichy, as inpatient for a period of 10 days and thereafter, discharged from the hospital. Since the treatment rendered proved futile, she died on 10.02.2004. The plaintiff's daughter, Roja @ Nandhini was studying 5th Standard at the time of incident. On receipt of legal notice, the Assistant Engineer, Sirugambur, issued an evasive reply. The deceased was aged about 10 years at the time of incident and she was healthy and helping her mother. Since she is the youngest daughter, the plaintiff suffered mental agony. The fatal accident took place only due to negligence and poor maintenance of the electrical wires by the Tamil Nadu Electricity Board, who have not exercised proper caution or protected device as per rules. Hence, the present suit has been filed praying for a direction to the defendants to pay a compensation for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) along with interest.

4. In the written statement filed by the defendants 2 and 3 and also adopted by the defendants 1 and 4, it is stated as follows:

The defendants denied all the averments made in the plaint. The certificate issued by the fire service personnel is admitted, however, in the certificate issued, there is no mention that the fire was caused due to the electric leakage. Further, in the First Information Report filed before Vathalai Police Station, the plaintiff has not complained about the damage of the goods and not about Roja @ Nandhini. The accident was not because of the negligence of the Electricity Board and the same was not reported to them. The defendants are not responsible for the incident and therefore, they are not liable to pay compensation to the plaintiff



and hence, prayed for the dismissal of the suit.

5. The trial Court has formulated the following two issues while deciding the suit:

1) Whether the plaintiff is entitled for compensation of Rs. 6,00,000/- along with interest as prayed for?

2) To what other relief the plaintiff is entitled for?

6. During trial, on the side of the plaintiff, she was examined as PW.1 and one Subash Chandrabose was examined as PW.2 and nine documents were marked as Exs.A1 to A9. On the side of the defendants, the Assistant Engineer, Siruganbur, was examined as D.W.1 and five documents were marked as Ex.B.1 to Ex.B.5.

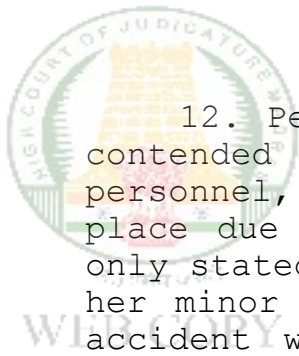
7. On analysis of the oral and documentary evidence, the trial Court has dismissed the suit. Aggrieved by the same, the plaintiff has preferred an appeal in A.S. No.40 of 2015 on the file of the learned Principal District Judge, Tiruchirapalli.

8. The first appellate Court, upon considering the oral and documentary evidence of the parties, had dismissed the appeal by confirming the findings of the trial Court.

9. Aggrieved by the judgment and decree passed by the first appellate Court, the present Second Appeal has been filed the plaintiff.

10. The learned Counsel for the appellant would submit that the fire accident occurred only due to the negligence on the part of the respondents 1 to 3 and because of poor maintenance of electrical wires, there was a leakage of electricity and electric sparks emitted on the thatched house of the appellant. At the time of the fire accident, the appellant and her children were inside the house and they were rescued by the neighbours. Despite the efforts made by them, one female child aged about 10 years, by name, Roja @ Nanthini suffered burn injuries, which led to her death.

11. The learned Counsel for the appellant would further submit that the evidence of P.W.1 and P.W.2 clearly proves the negligence on the part of the respondents 1 to 3, due to which, the fire accident had taken place. Ex.A.1 - Certificate issued by the fire authorities would clearly show that due to leakage of electricity, the fire accident occurred and Ex.A.2 - FIR also established the cause of fire accident. Exs.A.1 and A.2 would prove that the fire accident happened due to poor maintenance of electricity line by the respondents 1 to 3 and hence, they are liable to pay compensation to the appellant for the death of the minor daughter of the appellant. He would further contend that both the Courts below erred in rejecting the claim of the appellant and in dismissing the plaint of the appellant and the appeal as well and therefore, prayed for allowing this second appeal.



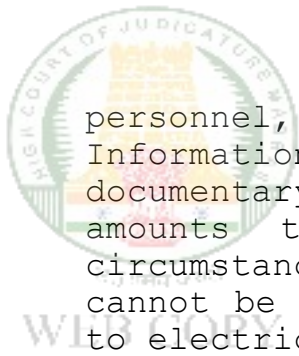
12. Per contra, the learned Counsel for the respondents 1 to 3 contended that though Ex.A.1 - Certificate was issued by the fire personnel, nowhere it is stated that the fire accident had taken place due to electricity leakage and in the F.I.R., the appellant only stated about the damage to the goods and not about the death of her minor daughter, namely, Roja @ Nandhini and further, the fire accident was not informed to the respondents 1 to 3 and in the absence of any oral and documentary evidence to show that the fire accident took place due to the poor maintenance of electricity line and because of leakage of electricity, the respondents are not liable to pay any compensation to the appellant and both the Courts below rightly appreciated the material evidence available on record and rejected the claim of the appellant and thus, prayed for the dismissal of this second appeal.

13. This Court paid its anxious consideration to the rival submissions made on either side.

14. It is seen that the appellant and her children were residing in the thatched house in question at the time of the fire accident. Immediately after the fire accident, the appellant and her children were rescued by the neighbours. The fire personnel visited the house in question and issued Ex.A.1 - Certificate to the effect that the fire accident took place in the house of the appellant. Thereafter, Ex.A.2 - FIR would clearly establish the fact that there was a fire accident in the house of the appellant.

15. It is the specific case of the appellant that the incident took place on 01.12.2004 at about 09.30 pm., and at that time, the appellant and her children had gone to sleep at about 9.00 p.m., and at about 9.30 pm., a fire broke out in her thatched house and she rushed along with her children outside the house. Upon hearing her shouting, the neighbours came out of their houses and rescued them. Further, in the FIR itself, the appellant had clearly stated that the cause of the fire accident was only due to electric leakage and electric sparks. In the said fire accident, one of her daughters, namely, Roja @ Nandhini, suffered multiple burn injuries and without responding to the treatment, she died on 10.12.2004 due to burns as seen from Ex.A.4. It is an admitted fact that the death of the deceased daughter of the appellant was due to the injuries suffered by her in the fire accident.

16. The trial Court while considering the oral and documentary evidence available on record, has categorically found that the only fact remains for consideration is as to whether the fire was caused due to the electric leakage or electric sparks as alleged and whether the said leakage is attributable to the negligence of the defendant and apart from the First Information Report, filed by the appellant, there is no other documentary evidence to show that the incident was due to electric leakage or electric spark. The fire service personnel visited the place of occurrence and issued a certificate. However, in the certificate issued by the fire service



personnel, the cause of fire has not been mentioned. The First Information Report, in this case, cannot be taken to be a documentary proof of fire due to electric leakage since it only amounts to complaint given by the plaintiff. In the said circumstances, the trial Court came to the conclusion that the FIR cannot be considered as a proof to establish the cause of fire due to electric leakage.

17. The trial Court further found that the appellant stated that she was inside the house along with the children at the time the fire broken out in the hut, but, in the cross examination, she deposed that she was in the cow shed tying the cows and when she came back she saw her hut in flames. Therefore, the trial Court found that the appellant did not have any direct knowledge as to the cause of fire accident. While considering the oral and documentary evidence, the trial Court also found that the appellant admitted that she did not see the hut catching fire, but, the statement of P.W.2 is totally contradictory. Further, it is not the case of the appellant that the neighbours saw the electric leakage or electric sparks. Therefore, the trial Court held that the cause of fire accident was not proved by the appellant and rejected the claim of the appellant. The first appellate Court, while confirming the judgment and decree of the trial Court, held that the appellant is not entitled to the relief of compensation.

18. On a careful scrutiny of the judgments and decrees of both the Courts below, this Court is of the view that both the Courts below rightly held that the appellant has not proved the cause of fire accident based on the oral and documentary evidence available on record and hence, both the Courts below came to the conclusion that the appellant is not entitled to the relief of compensation for the death of the minor daughter of the appellant, in the absence of any materials so as to prove the cause of fire accident and therefore, this Court finds no infirmity or irregularity in the concurrent findings of both the Courts below. However, it is an admitted fact that the minor daughter of the appellant died in the said fire accident and the loss of life cannot be simply brushed aside by citing technicalities and the turmoil of the appellant for the loss of her minor daughter cannot be compensated in terms of money. However, the appellant is entitled to seek remedy before the fourth respondent for the loss of life of her minor daughter.

19. While confirming the judgments and decrees of both the Courts below, this Court is inclined to direct the fourth respondent - District Collector, Trichy, to consider the claim of the appellant for compensation for the death of her minor daughter in the fire accident and forward the same to the Chief Minister's Special Cell, so as to enable the appellant to get compensation from the Chief Minister's Relief Fund for the death of her minor daughter, within a period four weeks from the date of receipt of a copy of this



20. With the above direction, this Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal District Judge, Trichy.
2. The IV Additional Subordinate Judge, Trichy.
3. The Officer in Charge,
Chief Ministers Special Cell(Relief Fund),
Chennai.
4. The District Collector,
Collector Office Road,
Trichy.

Copy to

The Section Officer,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.SPL.GP (SR-3097[F] dated 31/01/2022)

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