

Sushma

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 68 OF 2023

Bharat Sanchar Nigam Limited
Through Dharmendra Kumar Jain
Asst General Manager (Admin) ... Appellant

Versus

Smt. Vaishali @ Shobha Leeladhar Patil
and others ... Respondents

...
Mr. S.C. Arora – Advocate for Appellant

....

CORAM : GAURI GODSE, J.

DATE : 03rd March, 2023

PER COURT :

1. The Appellant – a central public sector undertaking, who is original defendant no. 1 has suffered concurrent decrees, directing the appellant and respondent nos. 5 and 7 to pay an amount of Rs. 10 Lakhs jointly and vicariously, to the heirs and legal representatives of the victim, towards compensation. The victim who was plying a scooter fell down in a pit dug open by the appellant on a road and died as a result of the injuries sustained by him. Respondent no. 5 who is the contractor of the appellant is the original defendant no. 2 and respondent no. 7 is Union of India who is the original defendant no. 4.
2. This Second Appeal arises out of a most tragic and sad litigation. It is most disheartening that a public sector

undertaking, after failing to comply with its obligations and duties, has made every effort to shirk its responsibility. Instead of expressing sorrow and taking corrective measures, the appellant (“BSNL”) has refused to pay the compensation amount on a spurious ground that in view of the terms and conditions of the contract, the respondent no. 5 (“contractor”) was liable to indemnify BSNL against all such damages and compensation against all the claims and proceedings, cost, charges and expenses arising out of the work of the contract.

3. The Second Appeal challenges concurrent decrees granting compensation to the respondent nos. 1 to 3 (“plaintiffs”) on account of the death of the husband of respondent no. 1 (“Liladhar”). Respondent no. 2 is the mother of the deceased and respondent nos. 3 and 4 are children of the deceased.
4. The respondent nos. 1 to 3 had filed Special Civil Suit No. 352 of 2004 for seeking compensation on account of death of Liladhar who expired in a road accident occurred on 7th February, 2003, on a road passing from Swatantra Chowk to Bhahinabai Garden. The deceased Liladhar was riding on his scooter from near Dosti Garage and fell down into a pit that was dug up on the road for the purpose of carrying out the work by

BSNL through the contractor. The suit was filed against BSNL, the contractor of BSNL, Municipal Corporation and Union of India.

5. All the defendants appeared in the suit. Except Union of India all the defendants filed their respective written statements and denied the suit claim. Suit proceeded without the written statement of Union of India. BSNL contended that all the necessary permissions were taken before carrying out the work on the concerned road and that the defendant no. 2 was given the contract for the work and he was entirely responsible for taking all the safety measures for carrying out the work on the road. BSNL also contended that the deceased Liladhar was himself also responsible for the accident that occurred and ultimately caused death of Liladhar. The contractor contended that the suit was not maintainable and there should have been a claim filed under the Motor Vehicles Act. The Municipal Corporation contended that the Municipal Corporation was not responsible for the work carried out by BSNL.
6. By judgment and decree dated 21st December, 2013, passed by the learned 5th Joint Civil Judge Senior Division, Jalgaon, the suit was partly decreed and BSNL, contractor and Union of

India were held jointly and vicariously liable for payment of compensation of Rs. 10 Lakhs to the plaintiffs with interest at the rate of 9% per annum from the date of the accident. The learned Trial Judge, dismissed the suit as against the Municipal Corporation. The learned Trial Judge recorded specific findings on the negligence of BSNL and the contractor in carrying out the work on a public road. Learned trial Judge on examining the oral evidence of the Junior Engineer examined on behalf of BSNL recorded that BSNL failed to prove that there were any safety measures taken at the spot where the pit was dug. Thus, on appreciation of the evidence on record, BSNL and the contractor are held responsible for the accident due to their negligence, which ultimately caused the death of Liladhar. Hence, BSNL, Union of India and the contractor are held liable to pay the compensation amount.

7. After examining the evidence on record, the Municipal Corporation was held not responsible for making payment of the compensation. It is unfortunate that to avoid making payment of the amount of compensation, the appellant has tried to shift the responsibility upon the Municipal Corporation.
8. Being aggrieved by the decree passed by the Trial Court BSNL

preferred Regular Civil Appeal No. 55 of 2014. A separate Regular Civil Appeal No. 64 of 2014 was preferred by the contractor. The first appellate Court framed points for consideration with respect to whether the Contractor had taken necessary precautionary measures at the spot where the work was carried out. The first appellate Court after examining the evidence on record has confirmed the findings of the Trial Court that the contractor failed to take safety measures. Thus, the first appellate Court held that the accident took place due the negligence on the part of BSNL and its contractor. Hence, they were liable to pay the compensation amount to the plaintiffs.

9. Both the Courts while granting the decree for compensation for an amount of Rs. 10 Lakhs has taken into consideration the age as well as the source of income of the deceased and the number of dependents on the deceased. Thus, by re-examining the evidence on record the first appellate Court confirmed the decree passed by the Trial Court. Hence, the present second appeal is preferred by BSNL.
10. Learned Advocate appearing for the appellant/BSNL submitted that BSNL, pursuant to a tender process had awarded contract to the contractor by executing an agreement. Pursuant to the terms

and conditions of the agreement, the contractor was liable to indemnify BSNL against all the losses and claims in respect of any injury that would cause to any person due to any accident during the execution of the work. He, therefore, submitted that in view of the indemnity given by the contractor, BSNL cannot be held responsible for making any payment towards compensation as directed by both the Courts. Learned Advocate further submitted that the case of the plaintiffs was that the accident occurred as there was no street light at the concerned spot, hence, the deceased Liladhar had fallen in the pit that was dug up for the work that BSNL carried out. Thus, he submitted that both the Courts have committed an error in exonerating the Municipal Corporation from making the payment. He submitted that both the Courts ought not to have imposed the entire responsibility of making payment of compensation only upon BSNL. He, therefore, submitted that the Second Appeal raises a substantial question of law as to whether BSNL can alone be held liable for making payment of compensation in view of the pleadings of the plaintiffs.

11. I have considered the submissions made on behalf of the appellant. I have perused the record of the Second Appeal.

Both the Courts have examined the entire evidence on record and have concurrently held that the death of Liladhar had occurred by accidentally falling into the pit that was dug up by the contractor of BSNL for the work of BSNL. It is not in dispute that the pit was dug up on the road by the contractor for execution of the work entrusted by BSNL. It is further not in dispute that the accident occurred at the spot of the said work which has caused the death of Liladhar.

12. There is absolutely no merit in the submission that in view of the indemnity given by the contractor, BSNL cannot be held responsible for making payment of compensation. It is not in dispute that the contractor was entrusted work by BSNL, Hence it was the primary responsibility of BSNL to ensure that all the safety measures were being taken for executing the work on a public road. If as per the terms and conditions of the agreement, the contractor was liable to indemnify BSNL against any losses or claims with respect to any injury or damages caused to any person on account of any accident with respect to the work contract, the same will not absolve BSNL from its primary liability to pay compensation to the Plaintiffs. In view of the indemnity given by the contractor, it was always open for BSNL

to recover the amount from the contractor. However, the said clause of indemnity cannot be a ground to exonerate BSNL for the negligence on the part of the contractor in carrying out the work entrusted by BSNL. It is important to note here that, both the Courts have observed that as per the evidence on record, BSNL has not taken any action against the contractor and on the contrary has made all the payments to the contractor.

13. There is also no merit in the submission that the Municipal Corporation was also responsible for making payment of compensation in view of the pleadings of the plaintiffs. It is clear from the findings recorded by both the Courts that the accident had occurred due to the digging up of the pit on the road and not due to absence of any street light. There is a clear finding recorded by both the Courts that since there were no safety measures taken for the purpose of carrying out work on the public road, the accident had occurred and caused death of Liladhar.
14. Appellant cannot be absolved of their primary liability to compensate the victim of the accident merely because the work was outsourced. A common person cannot be made to suffer silently due to actions and/or inactions by the State

Instrumentalities or an individual acting on behalf of the State Instrumentality.

15. There is no illegality or perversity in the reasonings recorded by both the Courts. There is no ground to interfere with the findings recorded by both the Courts. There is absolutely no merit in the submissions made on behalf of the appellant/BSNL. There is no substantial question of law involved in the Second Appeal. Hence, the Second Appeal is dismissed.
16. In view of the peculiar facts of the case and considering the frivolous defence taken by BSNL in such an unfortunate litigation, this is a fit case to award costs. The suit is of the year 2004 for compensation towards death due to accident of 7th February 2003, which occurred due to negligence of BSNL and its contractor. Due to the irresponsible and insensitive stand taken by BSNL, the plaintiffs are till date deprived of the compensation amount. Appellant/BSNL shall pay costs of Rs. 25,000/- to the High Court Legal Services Committee, at Aurangabad. Costs to be deposited within a period of six weeks from today.

[GAURI GODSE, J.]