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A.S.No.381 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**
A.S.No.381 of 2016

- 1.The Chairman,
Tamil Nadu Electricity Board,
Chennai, having office at
Anna Salai, Chennai.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Cuddalore Electricity Distribution Circle,
Cuddalore – 1 having office at Cuddalore,
- 3.The Assistant Executive Engineer,
Vadakuthu, Cuddalore Electricity Distribution Circle,
Tamil Nadu Electricity Board,
having office at Vadakuthu, Panruti Taluk.
- 4.Junior Engineer, (O&M) Vadakuthu,
Cuddalore Electricity Distribution Circle,
Tamil Nadu Electricity Distribution Circle,
having office at Vadakuthu, Panruti Taluk. ... Appellants

Vs.

- 1.Baggialakshmi
- 2.Minor Prasad ... Respondents

PRAYER: Appeal filed under Section 96 of CPC read with Order 41 & 41A
of CPC against the judgment and decree dated 06.06.2014 made in



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O.S.No.131 of 2011, (Pauper O.P.No.56 of 2011) on the file of the Principal District Court, Cuddalore.

For Appellant : M/s.J.Hemalatha

For Respondents : No Appearance for RR1 & 2

JUDGMENT

This Appeal Suit had been filed as against the judgment and decree dated 06.06.2014 made in O.S.No.131 of 2011, (Pauper O.P.No.56 of 2011) on the file of the Principal District Court, Cuddalore.

2. A brief facts of the case is as follows:-

The second respondent herein was electrocuted and that such electrocution happened due to the non maintenance of the electric lines, due to which the second respondent had suffered severe burn injuries and the portion of his right hand had to be necessarily amputated to save his life and therefore, he had been permanently disabled and a Suit had been initiated by the respondent herein seeking compensation not only for the injuries suffered by the second respondent, but also for the mental agony, the first respondent had underwent claiming damages of Rs.12,00,000/- for both of



them. It is also pertinent to note that the Suit had been initiated by the respondent herein as an indigent person, which was also ordered by the Court below after examination of the evidences and having gone through the various documents filed by the respective parties and had awarded a sum of Rs.3,62,200/- as compensation to the respondents herein and has also directed the appellants herein to pay a Court fee of Rs.90,001/- due to the Government. Being aggrieved, the appellants are before this Court.

3. Heard Ms.J.Hemalatha, the learned counsel appearing for the appellants. In spite of notices having been duly served on the respondents 1 & 2 and their names are also printed in the cause list, none has entered appearance either through a counsel or in person and therefore, called absent and set exparte.

4. The learned counsel appearing for the appellants would submit that no such occurrence had taken place as alleged in the plaint. She would further contend that the respondents herein even though have marked a complaint about the alleged incident to the Police as Ex.A.2, they had not substantiated the filing of the complaint by producing any receipt that had been issued by the concerned Police. She would further submit that the



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respondents have also not intimated of any such incident that had taken place on that day as alleged in the plaint to the department. She would further submit that being the position, the appellants cannot be held to be responsible for the injuries that had been caused to the second respondent for payment of compensation. She would further submit that the Court below had grossly erred in entertaining the claim made by the first respondent for compensation on the ground of mental agony and other incidental expenses for taking the second respondent to the hospital. She would further submit that the Court below had wrongly assessed the damages that had been awarded to the second respondent. She would further vehemently contend that the Court below had also wholly erred in directing the respondents to pay a court fee of Rs.90,001/- due to the Government on the entire suit claim. She would further submit that it has been well laid by various judgments of the Court that when the defendant is directed to pay the court fee, then such direction cannot be issued exceeding the amount payable on that portion of the plaintiff's claim which is allowed. In that context, she would rely upon the judgment of the Division Bench of this Court in the case of *Meera Nireshwalia vs. Sukumar Nireshwalia* reported in *1994 1 MLJ 242* and judgment of this Court in the case of *G.Chitti Babu vs. S.Sundaramurthy & Ors.*, reported in *2013 (5) CTC 844*.



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Relying upon the said judgment, she would submit that utmost the appellants/defendants would be entitled to only pay the court fee on the allowed amount and the respondent/plaintiff are bound to pay the court fee for the disallowed portion. Hence she would contend that the Appeal Suit would have to be allowed and the judgment and decree of the Court below would have to be set aside.

5.I have considered the arguments made by the learned counsel appearing for the appellants and perused the materials placed on record.

6.The respondents had initiated the suit seeking for damages for a sum of Rs.12,00,000/- for the permanent disablement of the second respondent herein and the damages for mental agony that had been caused to the first respondent herein. To drive home the case they had examined five witnesses. The first respondent had examined herself as PW-1 and had examined three independent witnesses to speak about the incident as PW-2 to PW-4. The Doctor who had treated the second respondent was examined as PW-5. They had marked nine (9) documents, which have been seriatim as Exs. A1 to A9. On the side of the appellant/defendant, they had examined a person holding the office of the fourth appellant as DW-1, but



had not produced any documents whatsoever on their side. The Court below

had framed four issues which are as follows:-

- 1) Whether the second plaintiff suffered permanent disability as stated in the plaint?
- 2) whether there was a lapse and negligence by way of omission on their part in the proper maintenance of the High Tension overhead lines by the defendants?
- 3) whether the 1st and 2nd plaintiffs are entitled to claim as set out in the plaint?
- 4) to what reliefs, the plaintiffs are entitled?

7. After analyses of the issues framed by the Court below and in considering the reasoning and findings, this Court is of the view that the issues were rightly framed and the same are affirmed by this Court. Therefore, I am not inclined to frame any points for consideration in addition except to see whether the Court below has rightly appreciated the facts and arrived at a just conclusion.

8. The Court below had given a specific finding that the incident of electrocution had taken place which had led to the disablement of the second



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respondent for which the appellants herein alone were held responsible for not properly maintaining the electric line and has awarded the damages.

The first respondent had been awarded a sum of Rs.50,000/- towards mental agony and other sufferings under transport and attending in hospitals, the second respondent was entitled to a sum of Rs.3,12,000/- of which Rs.2,70,000/- has been awarded towards permanent disability; Rs.10,000/- towards pain and sufferings; Rs.10,000/- towards extra nourishment; Rs.10,000/- towards transportation and Rs.10,000/- towards stay in hospital and Rs.2200/- towards medical expenses. Totally, the respondents 1 and 2, were entitled for a sum of Rs.3,62,000/- and the appellants were also directed to pay the court fee of Rs.90,001/- on the entire suit claim.

9.The respondents have marked a Police complaint as Ex.A2, that they had alleged to have given, but however, no proof of such filing had been produced before this Court by way of any documentary or oral evidence. They had also not produced any documents indicating intimation of such incident to the respondent. This has been heavily relied upon by the learned counsel appearing for the appellants to contend that no such incident had taken place. She had also heavily contended that the Court below had relied upon the evidence of PW-1 who is the mother of the victim and hence



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such evidence alone should not have been considered by the Court below to come to a conclusion that such an incident had taken place.

10.I am afraid that such contention is without any merits. From the records it could be seen that three independent witnesses were examined in this case by the respondent/plaintiff, of course they are neighbours. A perusal of their deposition would show that even though they have not witnessed the actual electrocution, but in categorical and clear terms they had deposed that the second respondent had suffered injuries and was lying on the ground due to electrocution. They had also specifically in their deposition stated that the electrical post near the place of incident was seen slanting 2 to 3 feet and the said witnesses were cross examined by the appellants and that such statement had not been retracted back by the respective witnesses, but on the other hand they had reiterated their statement in the chief.

11.The Court below had also found fault with the appellants herein in not producing the relevant maintenance register on that particular day to establish that no such incident had occurred. The witness on the side of the appellants had specifically admitted that if such incident had occurred and



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rectified by the department, then the same would have been shown in maintenance register. Even though to deny any such incident and to substantiate the same, the appellants ought to have produced such maintenance register.

12.It is an admitted case that the victim, the second respondent had suffered electrocution, which was proved by Exs. A3, A6, A7 and A9, which are the discharge summaries of the second respondent. On a perusal of these exhibits also, it is clear that the victim was diagnosed as had been electrocuted.

13.Reliance placed upon by the learned counsel that PW-5, the Doctor examined by the respondents had admitted to a suggestion that these injuries could have also been caused due to fire. Such submission, in my view is without any basis in the light of the diagnosis in the discharge summaries and the answer given by the PW-5 to the suggestion during the cross examination does not exclude an electrocution for the cause of the injury. In such a view of the matter, I hold that there is no error committed by the Court below in coming to a conclusion that the appellants are responsible for the cause of electrocution.



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WEB COPY 14. Now coming to the reasonings given by the Court below for arriving at a just and fair compensation for the damages that had occurred to the respondents, I also do not find any infirmity, as the Court below had given cogent reasoning and findings as to how it had come to such a conclusion.

15. However, the learned counsel appearing for the appellant is right in contending that the appellants/defendants in the Suit would not be fasten with the liability to pay the court fee for the entire Suit claim. Reliance placed upon by the learned counsel appearing for the appellant on the judgments stated supra also clearly lay down the same. For better appreciation the relevant paragraphs of the judgments are extracted herein below:-

In the case of ***Meera Nireshwalia*** stated supra

25. Since the suit was filed as an indigent person, the court below has directed the wife to pay the court fee for the abovesaid sum of Rs. 3,24,000/- which represents the disallowed portion of the claim for past maintenance. Thus the plaintiffd has to pay court fee, as per the decree of the Family Court, Rs.33,300/- to the Government Likewise, she has to be directed in this appeal also to pay a similar sum as court fee, no doubt deducing the sum of Rs. 20/- paid by her, as court fee, treating originally this appeal as civil



miscellaneous appeal. By an earlier order, this court has allowed her to convert the civil miscellaneous appeal as a regular first appeal and has also allowed her to prefer the said appeal as an indigent person. Under Order 33, Rules 10 and 11, C.P.C. We have to direct her to pay court fee on the disallowed portion of her claim. It is held in [Chandrareka v. Secretary of State](#), (1981) ILR 14 Mad 163, [Secretary of State v. Thripurasunda Rammal](#), AIR 1926 Mad 474 and [Srinivasa Ayyar v. Lakshmi Ammal](#), AIR 1928 Mad 216 that the plaintiff is bound to pay court fee for the disallowed part of the claim and it is not open to the court to direct the defendant to pay court fee exceeding the amount payable on that portion of the plaintiff's claim which is allowed. But in the present case the court fee payable would consume her maintenance amount for three years. In view of the peculiar facts of the case and the pitiable condition of the plaintiff we would earnestly recommend that the State Government should consider waiver or remission of the court fee payable by her both on the plaint and the memorandum of appeal, particularly when it has not been proved that she has got any other assets or income, and she is already aged above 63 years.

G.Chitti Babu's case stated supra

13.In the present case, the plaintiffs/respondents have filed the suit as an in forma pauperis claiming damages of a sum of Rs.2,00,000/- out of which the trial court decreed the suit only to the extent of Rs.50,000/-. Pending the Civil Revision Petition, the first respondent, who is the husband of the deceased died, and his legal heirs are recorded as respondents in this case. The respondents are also served but there is no representation made on their behalf. Taking into consideration that the incident of wall



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collapse took place in the year 1997 and the fact that the trial court awarded only Rs.50,000/- in favour of the plaintiffs 1 to 10/respondents herein, following the Division Bench of this Court mentioned supra, this Court hereby recommend that the State Government shall consider waiver or remission of the court fee payable by the respondents/ plaintiffs on the plaint taking note of their pitiable condition.

16.In view of the law laid down in the aforesaid judgments, I am of the view that the direction issued by the Court below directing the appellants/defendants to pay a sum of Rs.90,001/-, as the court fee towards entire suit claim would have to be modified.

17.The respondents are only liable to pay a court fee for the allowed portion namely Rs.3,62,000/-. It has also been held by the Division Bench of this Court that for the remaining amount, it is the plaintiffs/respondents herein, who have to make good the court fee for the disallowed portion [**Rami Reddi & Anr., vs. Tanati Chenchu Polamma** reported in **AIR 1930 Madras 1000**]. However considering the fact that the respondents herein have instituted the suit as an indigent person, which has also been approved and accepted in allowing them to sue as an indigent person, I do not propose to direct them to pay the balance court fee for the disallowed portion, if such a direction is issued 1/5th of the award amount would have to be shelled out by them from the amount awarded towards the damages. It is also a



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peculiar case that the second respondent had lost his arm at a very tender age. In such circumstances, I would earnestly recommend that the State Government should consider waiver or remission of the court fee payable by the plaintiffs/respondents herein.

18.In the result, the Appeal Suit is partly allowed. However there shall be no order as to costs.

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Index :Yes/No

Internet: Yes/ No



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