

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(272)

RSA-142-2021 (O&M)

Date of Decision : March 22, 2023

Punjab State Power Corporation Limited and others

.. Appellants

Versus

Sarabjit Kaur and others

.. Respondents

(272-A)

RSA-289-2021 (O&M)

Balwinder Kumar

.. Appellant

Versus

Sarabjit Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Anu Chatrath, Senior Advocate, with
Ms. Divya Sharma, Advocate, for the appellants
in RSA No.142 of 2021.

Mr. Rajnikant Upadhyay, Advocate,
for the appellant in RSA No.289 of 2021.

Mr. Mandeep Singh Dhaliwal, Advocate,
for respondents No. 1 to 3 in both appeals.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1056-C-2021 and CM-1779-C-2021

As prayed for, the applications are allowed.

Brief synopsis are taken on record.

CM-1058-C-2021

As prayed for, the application is allowed.

Documents as Annexures A-1 to A-5 are taken on record.

CM-1781-C-2021

As prayed for, the application is allowed.

Documents as Annexures A-1 to A-6 are taken on record.

RSA-142-2021 and RSA-289-2021

By this common order, two Regular Second Appeals, the details of which have been given in the heading of the order, are being disposed of as both the appeals arise out of the same incident.

In the present Regular Second Appeal, the challenge is to the judgment and decree of the Courts below by which, the suit filed by the respondents-plaintiffs seeking compensation of Rs.10 lacs in respect of the death of her husband Buta Ram, has been allowed.

The facts which led to the filing of the present appeal are that on 10.01.2011, Sh. Balwinder Kumar Assistant Junior Engineer i.e. one of the appellant asked the lineman Buta Ram, Assistant Lineman Dilbagh Singh and Jarnail Singh to repair the damaged electricity line after obtaining the permit of Urban Feeder 24 of the Village Ubhawal District Sangrur. Sh. Buta Ram, who was to climb the electricity pole to repair the damaged electricity line, was informed that the permit of closing the Urban Feeder 24 has been obtained and the electric supply to the wires which are to be repaired has been disconnected and will remain disconnect till the repair work is being undertaken. Keeping in view the direction given by the senior employees, Buta Ram climbed upon the pole to repair the electricity lines. The moment, Buta Ram touched the wires with his left hand as, the electricity to the said line was not disconnected, he suffered electrocution

and fell from the pole and ultimately, he succumbed to the injuries suffered in the said accident. An FIR was registered by the police of the said incident.

Thereafter, keeping in view the death of Buta Ram, his son was given compassionate appointment by the appellant-Corporation. Suit was filed by Sarabjit Kaur i.e. widow of Buta Ram along with her daughter and minor son claiming the compensation to the tune of Rs.10 lacs on account of the death of Buta Ram, which occurred due to the negligence of the respondent-Corporation. Keeping in view the evidence, which came on record, it was proved before the trial Court that Sh. Buta Ram was informed that permit of Urban Feeder 24 of village Ubhawal has already been obtained before he was asked to climb the pole for repairing the electricity line meaning thereby that electricity to the wires to be repaired has been disconnected which fact was incorrect and due to the said incorrect fact, Buta Ram climbed and touched live electricity wires and died, which amounts to the negligence on the part of the Department. The prayer in the suit was allowed and sum of Rs.10 lacs was awarded in favour of the plaintiffs by way of compensation along with 12% interest from the date of occurrence of accident till the decision and future interest @ 6% per annum till the decree was to be realized.

Feeling aggrieved against the decision of the trial Court, the appellants-defendants filed an appeal before the lower Appellate Court, which also came to be decided on 30.01.2020. Keeping in view the facts and evidence, which had come on record, the findings recorded by the trial Court was upheld and the appeal filed by the appellants herein was dismissed. Hence, the present Regular Second Appeal.

Learned counsel for the appellants argues that in the present case, after the incident occurred, fact finding enquiry was conducted so as to find out that who was at fault wherein, it was found that no one except the deceased himself was at fault as he climbed the pole on his own without there being any direction from the superior authorities. Learned counsel for the appellants submits that the said enquiry report has not been taken into account while deciding the suit filed by the respondents-plaintiffs, which is material fact and non-consideration of the same has resulted into the miscarriage of justice so as to award the claim of Rs.10 lacs to the plaintiffs as being claimed in the civil suit.

Qua the said argument, it may be noticed that by the time the said fact finding enquiry was started, the deceased employee, on whom the negligence was being put, was no where to defend himself. A dead employee was being held guilty by the respondents in the so called fact finding enquiry. Once, an employee on whom the onus of negligence was being put upon, not alive anymore to defend himself, the finding of the said fact finding enquiry cannot be made applicable so as to discharge the liability which the appellants-Corporation suffered keeping in view the death of Buta Ram in the facts and circumstances of the present case. Hence, non-accepting of the said fact finding enquiry by the Courts below so as to absolve the appellants of their alleged negligence cannot be treated to be perverse or in any manner incorrect while allowing the plea of the plaintiffs in awarding the compensation in their favour.

Learned counsel for the appellants further submits that due precaution should have been taken by the employee concerned before

climbing the pole even if he was asked climb the pole by his superior.

In this regard, it may be noticed that it has already come on record that the deceased employee was told that the electricity supplied to the lines which were to be rectified by him had been stopped. That being so, believing the said statement to be true, he climbed the pole to repair the damaged electricity line upon being asked by his superior officials. Accepting an incorrect fact told to the deceased employer and - an order a superior official cannot be treated as negligence on the part of the deceased employer.

That being the factual position which has emerged keeping in view the evidence which has come on record before the Courts below, the assertion that the employee concerned i.e. Buta Ram was negligent, cannot be accepted so as to allow the present Regular Second Appeals so as to absolve the appellant qua their negligence which led to the death of the Buta Ram.

At this stage, learned senior counsel for the appellants submits that the Corporation has been made liable keeping in view the negligence of the appellant Balwinder Kumar on whose instructions, the deceased had climbed the pole and suffered electrocution and died.

It may be noticed that Balwinder Kumar because of whom the Corporation was also held liable to pay compensation being the principle employer, is also an appellant in the present appeal. That being so, once the present appeal is a joint appeal, no order can be passed by this Court against the appellants inter se as being demanded by the Corporation that they be given right to recover the amount from Balwinder Kumar. Even a joint

appeal was filed before the lower Appellate Court.

It may be clarified that in case, there is any remedy as per the law to recover the amount of compensation from Balwinder Kumar, the Corporation will avail appropriate remedy in case available to redress their grievance.

Keeping in view the above, as no perversity in the judgments and decrees passed by the Courts below has been pointed out qua the fact and evidence which has come on record, the assertion of the appellant that this Court should re-appreciate the evidence in order to come at a different conclusion than the one arrived by the trial Court, is not permissible while adjudicating the present Regular Second Appeal.

No other argument has been raised.

Hence, keeping in view the facts and circumstances of the present case, as there is no perversity in the findings recorded by the Courts below has been pointed out by the appellants, both the appeals are dismissed.

CM-1059-C-2021 and CM-1782-C-2021

As the main appeals have been dismissed, present applications also stand dismissed.

A photocopy of this order be placed on the file of other connected case.

March 22, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes