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

**RSA No. 3714 of 2000 (O&M)
DATE OF DECISION : 10.04.2023**

Haryana State Electricity Board and another ...Appellants
Versus
Indro Devi and others ...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Dinesh Arora, Advocate,
 For the appellants.

 Mr. Lalit Kumar Narang, Advocate,
 for the respondents.

ARUN MONGA, J (ORAL)

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered adverse concurrent findings by the two Courts below, defendant/appellants herein are in second appeal against the judgment and decree dated 19.08.1999 passed by learned trial Court, as upheld/modified by learned First Appellate Court vide its judgment and decree dated 31.05.2000, decreeing the suit filed by plaintiff/respondents for recovery to the tune of Rs.2,00,000/- with no order as to costs.

3. Briefly stated, facts as noticed by learned Courts below are that Indro Devi widow of Hawa Singh, his minor children and mother, filed a suit on the ground that Hawa Singh (since deceased) was electrocuted due to negligence on the part of respondents. Hawa Singh was working as driver on tractor bearing registration No. HR-15-0174.

3.1 On 12.07.1990, he had gone to plough the fields but due to heavy rains and storm, electricity line got damaged and one wooden pole

had fallen down. While ploughing the fields, the tractor came in contact with electricity wire due to which Hawa Singh died because of electrocution. Office of respondent No.1 was informed well in time regarding condition of the wooden pole but due to their negligence, the incident had occurred. Widow, children and mother of deceased filed suit for damages to the tune of Rs.3,00,000/-.

4. Upon notice, respondent/appellants herein appeared and filed written statement pleading that 11 KV line was passing through the fields and due to heavy rains and dust storm it had fallen. Deceased died due to his own fault.

5. Based on the rival pleadings, following issues were framed:

“(1) Whether Hawa Singh (deceased) died due to electrocution due to negligency of defendants No.1 and 2, as alleged in the plaint ? OPP

(2) If Issue No.1 is proved, whether the plaintiff is entitled for the compensation, if so, what amount? OPP

(3) If Issue No.2 is proved, whether the plaintiffs are entitled for interest on the decretal amount ?If so, at what rate and from which date? OPD

(4) Relief.”

6. The parties to suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2, being inter-linked and inter-connected were taken up together and decided by learned trial Court in favour of plaintiffs. Issue No.3 was also decided against defendant/appellants herein. Consequently, suit of plaintiff/respondents was decreed vide impugned judgment and decree dated 19.08.1999 and plaintiffs were awarded compensation to the tune of

Rs.1,00,000/- along with interest at the rate of 12% per annum (simple) from the date of decree till its actual realization.

8. Both parties filed separate appeals; appeal filed by defendants was dismissed by learned First Appellate Court, while appeal filed by plaintiff/respondents herein was partly accepted and a sum of Rs.2 lakh was awarded as compensation to them along with interest at the rate of 12% per annum from the date of decree passed by learned trial Court till realization of the entire amount. Plaintiffs No.1 to 5 were held entitled to Rs.35,000/- each while plaintiff No.6 (mother) was awarded Rs.25,000/- by learned First Appellate Court. Feeling aggrieved, defendants have preferred the instant Regular Second Appeal before this Court.

9. I have heard learned counsel for parties and perused the judgments of both the Courts below.

10. In its judgment, learned First Appellate Court, *inter alia*, observed as under ;

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15. *It is thus found that the contesting defendants were under legal obligation to properly protect and maintain the electricity supply lines so as to prevent any danger. Since a dust storm had swept the area, it was incumbent upon the contesting-defendants to survey the area and to repair the damaged electric supply lines without delay. The defendants should have discontinued supply of electric current running through the fallen lines to prevent loss to life and property.*

16. *Ex.P3 is the post-mortem report and a study there into shows that Hawa Singh had died on account of shock due to electric burns, which were ante-mortem and were sufficient to cause death in ordinary course of nature. Ex.DW1/3 is the investigation report prepared by Assistant Engineer to the Chief Electrical Inspector into the cause of electrical accident. The Assistant Engineer found that one wooden H.T pole cut by while ants and also affected by natural calamities got broken and bent down. The Assistant Engineer further found that Hawa Singh had died as a result*

of electrocution because his tractor was entangled with live conductors.

17. *In this view of the factual matrix, the contesting-defendants cannot be allowed to shield their inaction and negligence by terming the same as vis major. Although, dust storm and heavy rain were acts of the God yet Hawa Singh had lost his life not because of the acts of the God but on account of neglect of the defendants in discharge of their statutory duties as cast upon them by rule 29 (supra).*

18. *The plaintiffs have been wronged due to negligence of the contesting-defendants. Now wrong should remain unredressed. This is the essence of Rule of Law. All the individuals or persons committing wrongs should be liable for an action for damages for breach of civil law or for punishment under criminal law. The law of torts is founded on the principle that every injury must have a remedy. In cases like the one in hand, compensation means anything given to make amends for the loss or injury in order that thereby the persons affected may receive equal value or something closely equal for his loss. Justice requires that compensation should be equal to the loss.*

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20. *In the present case nothing has been brought upon record by the defendants to show that the deceased was himself negligent or his conduct was improper, unjust and unlawful. Since Hawa Singh had died instantly after coming in contact with the live wires, there was nothing that could be done by the plaintiffs to minimize the damages or mitigate the liability of the defendants.*

21. *Though normally it is for the plaintiffs to prove negligence but the doctrine of res ipsa loquitur would come to their aid in this case. The plaintiffs have established their case by preponderance of probabilities and that the defendants had not acted with due diligence and care. The death of Hawa Singh affords prima-facie evidence for want of due care on the part of the defendants.*

22. *In these circumstances, inescapable conclusion that emerged was that Hawa Singh had lost his life due to neglect of the contesting-defendants and, therefore, the defendants were under legal obligation to undo the loss by paying compensation to the plaintiffs. Therefore, I hold that the learned trial Court has rightly held the contesting-defendants liable for the death of Hawa Singh.*

23. *Hawa Singh was employed on tractor of Bishan Singh and his earning have been assessed by the learned trial Court to be Rs.1500/- per month. This amount was even less than the minimum wages a driver is entitled to under the law. Therefore, accepting Rs.1500/- as monthly income of Hawa Singh, I hold dependency of the six plaintiffs to be Rs.1100/- per month. The age of deceased at the time of his death was 30 years according to Ex.P1 school leaving certificate. Even otherwise, age of the deceased has not been*

disputed by the defendants. In these circumstances applying the multiplier of fifteen, the plaintiffs are held entitled to a sum of Rs.1,98,000/- on account of loss of income. To put it in round figure, I allow a sum of Rs.2.00 lacs as compensation to the plaintiffs.”

11. Succinctly, crux of the contentions raised before me is that learned Courts below erred :

- (a) by not framing an issue of court fee even though the plaintiffs had filed the suit as indigent persons;
- (b) by assessing the income of Hawa Singh deceased at Rs. 1500/- per month ignoring the statement dated 20.04.1993 of PW Indro that her husband was working on a monthly salary of Rs. 600/- at the time of death;
- (c) by misreading the evidence and holding that the death of Hawa Singh was caused due to the negligence of the appellants; and
- (d) Ignoring the fact that no notice under section 33 of the Indian Electricity Act, 1910 had been given before filing of the suit.

12. Learned counsel for the respondents has vehemently contested these submissions.

13. Record does not show if any objection was taken in the pleadings of the appellants on the point of court fee and the non-service of notice before filing of the suit or even otherwise raised before the learned Courts below. I see no reason to entertain these contentions for the first time in the instant regular second appeal. The same are, therefore, rejected.

14. It is not shown that when PW Indro deposed on 15.04.1996 (during the trial of the main suit) that at the time of death, her husband

was getting monthly salary of Rs. 1500/-, whether she was confronted with her earlier statement dated 20.04.1993 (in connection with application for permission to sue as indigent person) that her husband was working at Rs. 600/- per month. The learned trial Court had assessed the monthly income of Hawa Singh as Rs. 1500/-. This finding was not challenged in the first appeal. None-the-less, the learned first Appellate Court observed that this amount was even less than the minimum wages of a driver under the law. In these circumstances, I am of the opinion that no fault can be found with the concurrent findings the two learned Courts below holding that the income of the deceased was Rs. 1500/- per month.

15. On perusal of impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. There seems no substance in the submissions that the impugned judgments are based on surmises and conjectures.

16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

17. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

18. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of

appellate jurisdiction of this Court under Section 100 of the Civil Procedure Code.

19. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

20. Learned counsel for parties submit that amount awarded by learned trial Court has already been deposited with the Registry of this Court.

21. Hawa Singh died on 12.07.1990. It is long time since his youngest child also attained majority and by now they would be on their own. In the changed situation, it would be appropriate if the entire amount of compensation is paid to the unfortunate widow of the deceased. In the premise, Registry is directed to disburse a sum of Rs. 25,000/- with interest to plaintiff No. 6 Misri Devi and the rest of the compensation amount of Rs. 1,75,000/-, along with interest earned on it during the pendency of appeal, against proper receipt and identification be paid to plaintiff No. 1 Indro, the unfortunate widow of the deceased.

22. Pending application/s, if any, shall also stand disposed of.

23. No order as to costs.

APRIL 10, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No