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

**RSA No. 1036 of 2005 (O&M)
DATE OF DECISION: 12.04.2023**

Chandu Ram**...Appellant****Versus****UHBVNL and others****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Parminder Singh, Advocate,
For the appellant.

None for the respondents.

ARUN MONGA, J (ORAL)

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

2. Dissatisfied with the lower amount of compensation awarded by the two Courts below, plaintiff/appellant herein is in second appeal against the judgment and decree dated 17.03.2003 passed by learned trial Court, as upheld by learned First Appellate Court vide its judgment and decree dated 19.02.2004, decreeing the suit filed by plaintiff/appellant for recovery to the tune of Rs.1,92,495/- along with simple interest @ 9% per annum from the date of accident till its payment. It was further directed that recovery be effected from the official who was negligent in performing his duty as a result of which the incident had occurred. An amount of Court fee of Rs.12,370/- on decretal amount of Rs.1,92,495/- was ordered to be paid by plaintiff and it shall be a first charge on decretal amount.

3. Briefly stated, facts as noticed by learned Courts below are that suit was filed by plaintiff as an indigent person seeking compensation to the tune of Rs.3,00,000/- on account of burn injuries sustained by him.

3.1 Prior to 22.05.1994 plaintiff was dealing in the sale purchase of wheat chaff and was earning a sum of Rs.3,000/- per month. On 22.05.1994, plaintiff purchased wheat chaff from one Darshan Singh and went to his fields to pick up the same in a tractor trolley. One Jagdish son of Ram Chander was also accompanying him. When he was looking for a way to get the tractor trolley out, he came in contact with broken live electricity wire which was lying on earth and resultantly, received burn injuries. He was taken to hospital. A huge amount was spent on his treatment.

3.2. Prior to accident, a complaint regarding broken live electricity wire was already lodged in the office of defendants. And yet, no action was taken by them. The incident had thus occurred due to negligence of defendants.

4. Upon notice, defendant/respondents appeared and filed joint written statement pleading that suit of plaintiff is liable to be dismissed in view of provisions contained in Indian Electricity Act. In case of any accident, information has to be sent to Electricity Inspector, who would then investigate the matter and fix the responsibility of erring official. However, plaintiff did not avail of any such remedy. Suit was further resisted on the ground that plaintiff was earning only Rs.1,000/- per month and no document relating to his income was produced. Hence, prayer for dismissal of suit was made.

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

“(1) Whether the plaintiff is entitled to compensation. If so, to what effect? OPP

(2) Whether the suit is not maintainable? OPD

(3) Whether the suit is time barred? OPD

(4) Relief.

6. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided by learned trial Court in favour of plaintiff. Issues No.2 and 3 were not pressed. Consequently, suit of plaintiff/respondents was decreed vide impugned judgment and decree dated 19.08.1999 and he was awarded compensation to the tune of Rs.1,92,495/- along with interest at the rate of 9% per annum (simple) from the date of decree till its actual realization.

7. Both parties filed separate appeals; appeal filed by defendant-Board was dismissed by learned First Appellate Court, while cross objections/appeal filed by plaintiff/respondents herein was partly accepted and a sum of Rs.2,00,000/- was awarded as compensation to him along with simple interest at the rate of 9% per annum from the date of accident till realization of the entire amount. Still aggrieved, plaintiff/appellant has preferred the instant Regular Second Appeal for enhancement of compensation, before this Court.

8. I have heard learned counsel for appellant and perused the judgments of both the Courts below.

9. Learned counsel for appellant argues that appellant has suffered permanent functional disability which will affect his earning capacity for lifetime. He is suffering from paralysis of both lower limbs below calf area. He would further argue that appellant is unable to do anything effectively. Income of the plaintiff ought to have been assessed

at Rs.3,000/- per month, but it was assessed at Rs.1,500/- per month which was also on lower side. Learned counsel would further contend that the plaintiff was the sole bread winner of his family and has four children who were/ are dependent upon him. Plaintiff having suffered 100% permanent disability, compensation awarded by the two Courts below is thus grossly inadequate.

10. There is no representation on behalf of respondents.

11. No doubt, it is incumbent duty of electricity supplier to maintain the electricity supply lines and keep them under protection at all times. In this context, for better appreciation, Rule 29 of Indian Electricity Rules, 1956 is reproduced herein below :

“29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus-

1 (1) All electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of 2 [human beings, animals and property.”

12. Let us now see the judgment of learned First Appellate Court, which *inter alia*, is premised on the following reasoning:

18. So far as the age of the plaintiff is concerned there is no dispute that his date of birth is 15.8.1937. Hence he had already completed 56 years of age on the date of accident i.e. 22.5.1994. In the absence of any documentary evidence that he used to do any business, it can be taken that he was only a labourer. He filed an affidavit before the respondent department giving his income as Rs. 2500/- per month and the same was accepted by the department. Hence in the absence of any other evidence income of the plaintiff was rightly taken by learned trial court as Rs 2500/- per month.

19. So far as the criteria for assessing compensation to be awarded to the plaintiff in this case is concerned, there is not fixed criteria. He was also not a workman under the Act. However learned trial court has rightly applied general

principles of the Act to assess compensation to be paid to injured plaintiff.

20. *If Section 4 of the Act is strictly applied then for the purpose of calculation of compensation monthly wages of a workman could not exceed Rs. 1000/- as the provisions stands on the date of accident i.e. 22-5-1994. However as only general principles were applied, learned trial court has rightly taken income of the plaintiff as admitted by the appellant defendants. Further as per guides lines as incorporated in section 4 of the Act read with Schedule IV of the Act. Learned trial court has rightly taken 60% of monthly income of the plaintiff for the purpose of calculation of compensation which comes to Rs. 1500/- per month. He has rightly multiplied the same by 128.33 as per general guidelines of Schedule IV of the Act as he was running in 57 years of age and the compensation was rightly calculated as Rs. 1,92,495/.*

21. *So far as the argument of learned counsel for the respondent plaintiff that he was also entitled for expenses incurred by him on his treatment, no evidence whatsoever has been adduced by the plaintiff in order to prove the said fact except his self serving statement. No medical bills whatsoever has been produced. Initially he got treatment from Civil Hospital, Karnal. Hence it cannot be said that he spent anything on his treatment in Civil Hospital, Karnal as treatment is given free of cost of a person who belongs to labour class. As already discussed above no question was asked from Dr. Miglani on behalf of the plaintiff as to how much amount was received by him from the plaintiff for his treatment in his hospital. However as he remained admitted in a private hospital for about three months, some guess work has to be done regarding expenses incurred by the plaintiff on his treatment. However in the absence of any documentary evidence it is held that he is entitled to another sum of Rs. 7,505/- as compensation on account of expenses incurred by him treatment in addition to Rs. on his 1,92,495/- already calculated by learned trial court on account of permanent disability to the extent of 100% suffered by the plaintiff. Hence total compensation comes to Rs. 2,00,000/-.*

22. *So far as the argument of learned counsel for the plaintiff that he is also entitled for 12 interest and 50% penalty, as per section 4A of the Act, as the compensation was not paid within one month of the accident, is concerned the said provision cannot be made applicable in case of the plaintiff as admittedly he was not a workman. Only general principles of the Act he been applied for calculating amount of compensation to be awarded to the plaintiff. It may also be mentioned here that if provisions of the Act are strictly applied, then for the purpose of calculating the amount of compensation income of the plaintiff could not have taken*

more than Rs. 1000/- per month on the date of accident as per explanation II of section 4 of the Act.

23. In view of my above discussion there is no merit in the appeal filed on behalf of the appellant- defendants and the same is hereby dismissed with cost. However the cross appeal/cross-objection filed on behalf of the respondent-plaintiff is partly accepted with no order as to cost and judgment and decree of the trial court respondent plaintiff compensation of Rs. are modified is held entitled 2,00,000/- along with to get simple interest @ 9% per annum from the date of accident till to the extent that payment.”

13. In my opinion, learned appellate Court has overlooked the factum of permanent disability. Learned appellate Court has also not appreciated the evidence properly.

14. At the outset, learned counsel for appellant submits that he confines his claim for compensation to the tune of Rs.1,00,000/- alone for which he has already affixed the Court fee. Learned counsel would further canvass that the 100% functional disability to earn any income should have been considered for awarding compensation. In case of 100% disability, taking into account the attendant charges, loss of income, special diet and transportation, appellant is entitled to at least Rs.3 lakh compensation, out of which Rs.2 lakh has already been awarded. His contention is that remaining amount of Rs.1 lakh along with interest @ 9% per annum may be awarded. He would further argue that *ad valorem* Court fee on an amount of Rs.3 lakh has already been affixed by appellant.

15. I find force in the contention of learned counsel for appellant that appellant did suffer 100% permanent disability below lower limb area after the burn injuries, as is evident from Disability Certificate (Exhibit PW5/A). The medical evidence is on record in the shape of statements of PW-2 Dr. O. P. Miglani and PW-3 Dr. Ravinder Arora. In the premise, I

am of the opinion that the compensation ought to be enhanced by Rs.1,00,000/- and the judgments and decrees of both the Courts below deserve to be modified.

16. As an upshot of the above discussion, the appeal is partly accepted and judgments and decrees of learned First Appellate Court are modified to the extent that appellant/plaintiff is held entitled to receive compensation of Rs.1,00,000/- over and above the amount already awarded, along with same interest @ 9% per annum from the date of accident till actual payment.

APRIL 12, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No