

Sr.No. 817

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-77-2015 (O&M)

Date of decision: 29.03.2023

Prem Singh and another

...Appellants

Vs.

UHBVNL and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Madhur Panwar, Advocate for
Mr. Aman Pal, Advocate,
For the appellants.

Mr. R.D.Bawa, Advocate,
Mr. Randhir Bawa, Advocate and
Mr. Dipanshu Kapur, Advocate
For respondent No.1.

ARUN MONGA, J. (ORAL)

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

2. Having suffered concurrent adverse findings by the two Courts
below, plaintiffs are in second appeal before this Court assailing learned trial
Court judgment and decree dated 26.03.2013, as upheld by learned First
Appellate Court vide its judgment and decree dated 01.12.2014.

3. Briefly stated, facts as noticed by Courts below are as under:-

“Briefly stated, appellants/plaintiffs instituted a suit for declaration and mandatory injunction on the averments that son, namely, Kuldeep of the plaintiffs was born on 02.09.1981 and was running a shop of repairing of agricultural implements and other business at main road, Mohana Bus Stop and was earning Rs.10,000/- per month from the above business. It is further averred that there is a transformer installed by defendant No.1/department in village Salarpur Majra and usually, this transformer is operated by the villagers itself, on the instructions of the employees of defendant No.1/department as none of the employees of the electricity department used to visit the village for day-to-day functioning of the electricity, or

for any other emergency work. Further averred that on the fateful day i.e. 21.06.2007 at about 8.00 p.m. Kuldeep (since deceased) after returning from his shop from Mohana, was passing by the side of the transformer in question and there was great sparking from the electricity lines and there was great danger of mis-happening and villagers had gathered at the spot and to avoid any mis-happening, Kuldeep tried to put down the handle of the said transformer at the instance of the villagers and also in view of the requirement of the moment and when said Kuldeep touched the handle of the transformer, he received electric shock, due to great negligence on the part of the electricity department. That a wire kept lying without insulation in the handle of the transformer and due to that, said Kuldeep got electric shock and was electrocuted and died at the spot. That the post mortem was conducted on the next day at about 10.30 a.m. at Civil Hospital, Sonapat and rapat of the incident with No.06 dated 22.06.2007 was got recorded by brother, namely, Azad Singh of the deceased. That the deceased Kuldeep died due to sole negligence of defendant No.1 as the transformer was not properly fixed up and insulated and live electric wire was hanging on the handle of the transformer. That the plaintiffs, being legal heirs and dependants of deceased Kuldeep, had suffered great mental agony and financial loss. That the plaintiffs requested the defendants to admit them as legal heirs of deceased Kuldeep and to pay damages suffered due to the death of deceased Kuldeep due to negligence of defendants, but defendants refused to admit their claim. Hence, the instant suit whereby decree of declaration declaring the plaintiffs to be legal heirs of the deceased has been sought and further seeking direction to the defendants for payment of at least 10 lacs as compensation/damages.”

4. Upon notice, defendant-UHBVNL appeared and filed written statement taking preliminary objections regarding maintainability, concealment of material facts, jurisdiction, cause of action etc.

4.2. On merits, it was submitted that transformer in question is maintained and looked after by the officials of defendant No.1. It was denied that there was any sparking in the transformer on 21.06.2007 or there was any danger of any mishappening. It was submitted that deceased had climbed on transformer on his own with some ulterior motive and died on account of his own negligence. Kuldeep was not electrocuted due to

negligence of the staff of defendant No.1. All other averments were also denied.

5. An application under Order 1 Rule 10 CPC was moved in this case and Mamta widow of Kuldeep was impleaded as defendant no.3. She also filed her separate written statement wherein she supported case of plaintiffs and stated that she is also entitled to get 50% of the amount, if received as compensation.

6. Replication was also filed wherein plaintiffs denied the averments raised by defendant No.1 in its written statement.

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

1. *“Whether the plaintiff is entitled to a decree of declaration and mandatory injunction in favour of the plaintiffs and against the defendants jointly and severally, declaring the plaintiffs to be the legal heirs of the deceased Sh. Kuldeep, and further directing the defendants for payment of Rs.10 lakhs as compensation/damages as prayed for? OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
3. *Whether the suit has no jurisdiction to try, entertain and decide the present suit? OPD*
4. *Whether the plaintiff has no locus-standi nor any cause of action to file the present suit? OPP*
5. *Relief.”*

8. The parties to the 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*.

9. On appraisal of evidence vis-à-vis pleadings, issue No.1 was decided against plaintiff and in favour of defendants No.1 and 2. Learned counsel for defendants No.1 and 2 did not press other issues at the time of arguments nor any evidence was led on those issues. Hence, issues No.2 and 3 were left undecided. Consequently, suit of plaintiffs was dismissed with costs vide impugned judgment and decree dated 26.03.2013.

10. Aggrieved, plaintiff-appellants preferred first appeal which was dismissed by learned First Appellate Court vide impugned judgment and decree dated 01.12.2014, resulting in instant Regular Second Appeal before this Court.

11. Learned counsel for appellants submits that learned Courts below wrongly held the deceased to be trespasser for turning down the safety device in emergency due to breakage of an electricity wire and that no negligence can be made out on part of the Respondent Department. He further submits that the primary reason for death of Kuldeep will be deficient maintenance at the hands of the respondents department in maintaining the live wire which broke off and the deficient maintenance and operation of the safety device equipped. He submits that respondent No.1 cannot escape his liability both on the doctrine of '*Causa Causan*' and '*Principle of Strict Liability*'. He contends that the respondents did not exercise care and caution in doing any periodic checks in ensuring that the live wire installed was maintained as mandated by the Electricity Act and the rules therein.

12. Per contra, learned counsel for respondent No.1 contends that learned Courts below have rendered the judgments under challenge after due and correct appreciation of record including the evidence adduced by parties. No fault can be found with the approach of learned Courts below. He further submits that deceased knowingly and voluntarily risked the danger and as such his legal representatives cannot recover compensation for any resulting injury by applying the principle of "*volenti non fit injuria*."

13. Having heard the competing contentions of learned counsels, I am of the view that both the Courts below committed manifest error in law

by mis-appreciating the evidence which resulted in perversity of the findings. The learned trial Court, *inter alia*, observed as under:-

“PW3-Vir Bhan has stated that on the date of incident, electricity was operational and transformer was working properly. However, one supplying wire was broken which was lying down on the main road. Complaint of that broken wire was made to the department. Wire had broken at that time only and Kuldeep was passing from there. Kuldeep on seeing the broken wire himself tried to put down the handle and therefore the said accident occur.”

Yet, the trial Court as also learned First Appellate Court, lost sight of the fact that here was a case of a citizen, who tried to act as a good Samaritan being fearful that a human life may be lost while crossing the road, where live wire was operational, on the fateful day and he tried to cut off the power supply from the safety device. Little did he know that what was supposed to be the safety device would cause his demise. It was a safety device which he tried to operate in order to cut off supply which caused his electrocution, since the device itself was perhaps not insulated. Whatever else may be the cause, fact is that safety device was dysfunctional and had electricity of high intensity running through it, which caused instant death.

14. In the premise, learned Court below ought to have applied the principle of “*causa causan*” as more elaborately noticed and enunciated by the Apex Court in *Sushil Ansal Vs. State through CBI, 2014 (06) SCC 173* which envisages that cause of all causes in itself should suffice to establish negligence, provided, of course, there was another way of avoiding a bigger accident which could have happened had the live electricity not been cut off. Safety device being the only option to cut off power supply, therefore the death was most definitely caused by the negligence of the department which not only failed to be careful in plugging the fault resulting from regular wear and tear of the high tension wire. With passage of time such high tension

necessarily requires to be regularly replaced and in case the same is not done, it is but natural that there could be a snap and hanging or fall of the high tension wire on the ground, which seems to have happened in the present case as well. It is obvious that not only the wire snapped, in fact the safety device, which ought to be periodically checked and replaced, was also running with live electricity through its insulation, which most likely would have been worn out, resulting in the electric shock to the deceased who died instantly. In this aspect, Rule 91 of Electricity Rules 1956 which casts duty on the officials of the Electricity department, being relevant, is reproduced herein below:-

“Section 91 in The Indian Electricity Rules, 1956

91. Safety and protective devices.—

(1) Every overhead line, (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumers' premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(2) An Inspector may by notice in writing require the owner of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule (1). 1[(3) The owner of every high and extra-high voltage overhead line shall make adequate arrangements to the satisfaction of the Inspector to prevent unauthorised persons from ascending any of the supports of such overhead lines which can be easily climbed upon without the help of a ladder or special appliances. Rails, reinforced cement concrete poles and pre-stressed cement concrete poles without steps, tubular poles, wooden supports without steps, I-sections and channels shall be deemed as supports which cannot be easily climbed upon for the purpose of this rule.”

15. The onus to prove that there was no negligence and there was complete discharge of duties completely lay on the DISCOM i.e., Uttar Haryana Bijli Vitran Nigam Limited. There is nothing on record that needful was done as envisaged in the above Rule. Had it been done, the life

of deceased could have been saved. As already noted, he was only trying to act as a good citizen to save the lives of others who could have in all likelihood come in contact with live wire lying on the passage. Even if it is assumed that there was no negligence on the part of DISCOM, as has been argued by learned counsel representing the DISCOM that it is the deceased, who died out of his own sheer anxiety of taking risk to cut off power supply from live wires by safety device and therefore, plaintiffs are not entitled to any damages, the said argument seems insipid in view of the principle of strict liability. A person of ordinary prudence would naturally not be in a state of mind to think that safety device, which was supposed to cut off supply would in itself, cause the accident of the nature that he would lose his life. Therefore in the entirety of the circumstances, either way, be it “*causa causan*” or “*principle of strict liability*”, UHBVNL is liable to compensate for the loss of life.

16. Learned counsel for appellants relies on *Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another*, reported in 2009 (3) *The Punjab Law Reporter* 22, *National Insurance Co. Ltd. v. Pranay Sethi*, reported in (2017) 16SCC 680 read with *Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others*, reported in 2019 (3) *SCC (Cri)* 153, for the purpose of computing compensation. Though these judgments pertain to cases for compensation under Motor Vehicles Act, yet in my opinion the principles and formula laid down therein can be applied to the instant case.

17. After having applied the principles in cases of *Smt. Sarla Verma and others, Pranay Sethi and Magma General Insurance Co. Ltd.*

Versus Nanu Ram alias Chuhru Ram and others (supra), amount of compensation is computed as below:

Deceased	Kuldeep
Date of accident	21.06.2007
Age	28 years
Notional income per month	Rs.10,000/-
Future Prospects @ 40%	Rs.4,000/-
Deduction 1/3 rd (there being three dependants)	Rs.14,000-4,666=9,334/-
Multiplier	17
Compensation	9334 x 12 x 17 =19,04,136/-
Consortium	44000x3= 1,32,000/-
Loss of estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	Rs. 20,69,136/-

18. Accordingly, the compensation shall be payable to appellants and respondent No.3 in equal shares along with interest @ 7% p.a.from the date of filing of the suit till the actual date of payment. The same shall be payable to appellants and respondent No.3 within a period of 02 months of their approaching respondent No.1-UH BVNL with web print of the instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of the suit.

19. In the premise, the appeal is allowed in above terms.

20. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

29.03.2023
vandana

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