

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

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RSA-5812-2018(O&M)
Date of Decision: 12.09.2023

Balwinder Singh

....Appellant

Versus

Punjab State Power Corporation Limited and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashish Gupta, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellant/plaintiff against the concurrent findings of dismissal of civil suit.
2. Plaintiff filed civil suit bearing CIS No.3683 of 2013, for recovery of Rs.1.5 lacs on account of death of his two buffaloes due to electrocution. The facts pleaded in the plaint are that on 05.06.2010, plaintiff took his four buffaloes to nearby motor/fields of Iqbal Singh s/o Udham Singh for watering the buffaloes, out of the four buffaloes, one of the buffalo was pregnant. After taking water, two buffaloes were going to the house of the plaintiff while other two were still having water. On the way back, two buffaloes of the plaintiff suffered electrocution by coming into contact of electricity wires, which were

lying fallen near the motor/field of Iqbal Singh and as a result of which both the buffaloes belonging to plaintiff died due to electrocution.

3. Accordingly, DDR No.22 dated 05.06.2010 was registered with Police Station Saddar, Rajpura and thereafter, their postmortem was also conducted. Plaintiff filed a complaint under Section 11/14 of Consumer Protection Act,1986 before District Consumer Disputes Redressal Forum, but, the same was dismissed on 11.04.2012, being not maintainable. Thereafter, plaintiff chose to file the civil suit for claiming compensation amounting to Rs.1.5 lacs alongwith interest @ 18 % per annum.

4. In the written statement filed by the defendants, it was pleaded that the dismissal of the plaint by the Consumer Forum has never been challenged by the plaintiff, therefore, civil suit is not maintainable and all the other pleadings were also denied by the defendants.

5. After framing of the issues and giving opportunities to both the sides for leading their evidence, learned trial Court reached to the conclusion that plaintiff has completely failed in proving the negligence of the defendants as there is no evidence led by the plaintiff that the wires with which the Buffaloes were electrocuted were supposed to be maintained by PSPCL (defendant No.1).

6. It was also observed that on although, plaintiff was vigilant enough to take immediate steps for lodging of the DDR and

conducting of postmortem, but still never moved any representation or application to the defendants for seeking his claim. Even, no site plan has been placed on record.

7. For the sake of convenience, findings recorded by learned trial Court under Issue No.1 is reproduced hereunder:

' It is settled law that the plaintiff has to stand on his own legs. The civil suit of the plaintiff is based on the fact that it was because of negligence of the defendants, the buffaloes of the plaintiff died due to electrocution near the motor of Iqbal Singh. But the plaintiff has not produced on record a single document, which could show that the wires with which the buffaloes were electrocuted, were supposed to be maintained by PSPCL. The plaintiff has not placed on record any evidence, which could show that after the incident, he made any representation to defendants seeking his claim. Without giving any intimation to the defendants, the plaintiff has filed the present suit. What does not appeal to logic is that the plaintiff was vigilant enough to lodge a DDR regarding incident and get the postmortem the buffaloes done, but not make a representation/complaint to defendant Electricity Department, who could have conducted inquiry and would have reached a logical conclusion that whether the incident of electrocution of the buffaloes had occurred with those wires, which the electricity department was supposed to maintain. Moreover, the plaintiff has not placed on record any site plan which he could have proved by examining the witness from the electricity department so as to prove that the wires with which the buffaloes were electrocuted, were supposed to be maintained by the defendants. When it is not proved on the record that the wires with which the buffaloes were electrocuted, were supposed to be maintained by the defendants, the defendants can not be held liable of negligence.

In view of the discussion made above, this issue is decided against the plaintiff and in favour of the defendants.'

8. Similarly, learned First Appellate Court, while dismissing the appeal has given its findings in paragraph Nos.13 and 14, which are reproduced hereunder:

'13. It was incumbent upon the plaintiff to have

proved his case by leading cogent and convincing evidence so as to entitle himself for the recovery of the amount, but as discussed above, he has miserably failed to adduce any cogent evidence which could establish that his buffaloes had died due to negligence on the part of the officials of the defendant board. It is the case of the plaintiff that the buffaloes died near the motor of Iqbal Singh where he had taken five buffaloes, out of which, two got electrocuted, but there is nothing on record as to whether the electric wires with which his buffaloes got electrocuted, were maintained by the defendant PSPCL or by private consumer such as Iqbal Singh or not. Admittedly, there is nothing on record that the plaintiff had made any representation to the PSPCL authorities seeking his claim as only then the defendant department could have got the enquiry conducted into the occurrence so as to conclude as to whether PSPCL authorities were supposed to maintain the said wires or not. Even no site plan of such wires had been placed on record by the plaintiff. There is not even an iota of evidence adduced by the plaintiff on record whereby it could be proved that the defendant PSPCL authorities were responsible to maintain the wires from which his buffaloes got electrocuted.

14. During course of arguments, the learned counsel for the appellant could not point out any evidence whereby it could be presumed that the electrocution of the buffaloes of the plaintiff was due to any i negligence on the part of the defendant officials nor any complaint or representation was made by the plaintiff to the PSPCL authorities which could have led them to hold enquiry into the occurrence. No doubt, two buffaloes got electrocuted as is evident from the postmortem report but for the plaintiff to be entitled to recover the damages in the suit, he was supposed to prove by leading cogent evidence that the electrocution had been due to negligence on the part of defendant board officials in not maintaining the electric wires, but strangely the plaintiff has not been able to prove that the said wires were infact required to be maintained by the PSPCL authorities.'

9. This Court is also of the view that it was upon the plaintiff to stand on his own legs and for that purpose, he was required to bring the material and required evidence in support of his pleadings.

Thus, finding no infirmity in the impugned judgment and

decree passed by both the Courts below, the same are affirmed and the present appeal stands dismissed.

10. As the appeal has been dealt with on merits, this Court does not find any reason to deal with the issue raised in the application i.e. CM-15979-C of 2018 for condonation of delay of 28 days in filing the appeal. Thus, application stands disposed of.

September 12,2023	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no