



S.A.No.113 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 12.03.2024	Judgment Pronounced on 28.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.113 of 2018

Tamil Nadu Electricity Board,
Represented by its Superintending Engineer,
Dharmapuri.

..Appellant

Vs.

1.Balamani
2.Minor Gomathi
3.Minor Vanmathi
4.Minor Valarmathi
5.Salammal
6.Minor Jayalakshmi
7.Palani

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.09.2016 made in A.S.No.7 of 2016 on the file of the Principal District Judge, Krishnagiri, reversing the judgment and decree dated 16.07.2015 passed in O.S.No.153 of 2014 on the file of the Sub-Court, Uthangarai.



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For Appellant : Mrs.J.Hemalatha Gajapathy

For Respondents
For RR1 & 6 : Mr.C.Prabakaran

For R7 : Mr.P.Paramasivados

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 22.09.2016 made in A.S.No.7 of 2016 on the file of the Principal District Judge, Krishnagiri, reversing the judgment and decree dated 16.07.2015 passed in O.S.No.153 of 2014 on the file of the Sub-Court, Uthangarai.

2.The Tamil Nadu Electricity Board has preferred the above Second Appeal contending that the rule of strict liability has not been followed by the Courts below, in awarding compensation for the electrocution death of one, Kotti @ Ramalingam.

3.The learned counsel for the appellant/Electricity Board has also filed a memo seeking amendment of the cause title. As the appellant has been



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restructured and it is now rechristened as TANGEDCO (Tamil Nadu Generation and Distribution Corporation Limited), and the appellant is also now known as TANGEDCO, represented by Superintending Engineer, Krishnagiri Electricity Distribution Circle, TNEB, Krishnagiri. The said memo has been taken on file and ordered.

4.The parties are described as per their litigating status before the Trial Court.

5.The case of the plaintiffs is that the when deceased Kotti @ Ramalingam, the husband of the 1st plaintiff and father of the plaintiffs 2, 4 and 6 and son of the 5th plaintiff, was passing through a ridge and the adjacent lands of one Ganesan to go to the river side on 12.11.2006 at about 9.00 p.m., not noticing a stay wire because of grass grown over the ridge and adjoining lands of Ganesan, the said deceased Kotti @ Ramalingam stepped over the stay wire and was electrocuted and died on the spot. Two persons by name Parthiban and Sudhakar, who were coming behind the deceased, realized the hidden danger and the reason for electrocution death of Kotti @ Ramalingam and found that the 1st defendant had unauthorizedly and



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illegally tapped the electric supply from the main line by using hooks. A police complaint was lodged on the very next day at 6.00 a.m., before the Barur Police Station and a case in Crime No.255 of 2006 was also registered under Sections 304 and 379 of IPC r/w Section 39 of Indian Electricity Act. It is also admitted that the deceased had crossed the said lands belonging to Ganesan for rabbit hunting. However, contending that the 1st defendant had no right to steal electricity and lay stay wires for killing rats to save his crops, the plaintiffs claimed compensation of Rs.6,00,000/-. Pending the suit, the appellant was also impleaded as a defendant and it is relevant to note that the suit was filed by the plaintiffs as indigent persons. Permission was granted and thereafter, the suit was numbered as O.S.No.153 of 2014 (originally registered as O.S.No.621 of 2007).

6.The 2nd defendant filed a written statement stating that even in the FIR, only the 1st defendant's name was mentioned and it is not a departmental fatal accident and the department cannot be blamed for the 1st defendant stealing electrical energy from the main line by provision of hooks. In short, the department denied its liability to pay compensation as it cannot be blamed for the theft of electricity and the consequent electrocution death, resulting out of the deceased coming into contact with the stay wire.



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7.The 1st defendant filed a written statement stating that the suit was liable to be dismissed for non joinder of Ganesan as the deceased died only in the lands belonging to Ganesan and not in the property of the 1st defendant.

8.The Trial Court dismissed the suit on the ground that the deceased was indulging in rabbit hunting which was an illegal act and therefore, his legal heirs cannot be compensated. The Trial Court also took note of the fact that the criminal case was pending and without any finding in the criminal case that it was only the 1st defendant, who was responsible for the death of Kotti @ Ramalingam, the suit cannot be decreed. However, on appeal preferred by the plaintiffs, the First Appellate Court reversed the judgment and decree of the Trial Court and directed the defendants, jointly and severally, to pay a sum of Rs.6,00,000/- as compensation.

9.Aggrieved by the reversal findings rendered by the First Appellate Court, the Electricity Department alone has chosen to prefer the above Second Appeal.



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10.The above Second Appeal was admitted by this Court on 13.02.2018, on the following three substantial questions of law:

“a) Whether the Lower Appellate Court is right in reversing the Judgment and Decree of the Trial Court without considering the absence of material proof of evidence with regard to cause of death?

b) Whether the Lower Appellate Court is right in coming to conclusion that the appellant is not liable under the principle of strict liability?

c) Whether the suit is maintainable having filed the FIR against the 1st defendant and added this appellant as 2nd defendant.”

11.I have heard Mrs.J.Hemalatha Gajapathy, learned counsel for the appellant and Mr.C.Prabakaran, learned counsel for the respondents 1 to 6 and Mr.P.Paramasivadosh, learned counsel for the respondent 7. I have also gone through the records, pleadings, oral and documentary evidence adduced by the parties before the Trial Court and the judgment and decree of the Trial Court as well as the First Appellate Court.

12.Mrs.J.Hemalatha Gajapathy, learned counsel for the appellant would contend that the Electricity Department cannot be held responsible or



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liable and admittedly there has been a theft of electricity from the main line.

Applying the rule of strict liability, the 1st defendant alone would have to be held liable to compensate the claimants, viz., plaintiffs, the legal representatives of the Kotti @ Ramalingam and not the Department. The learned counsel for the appellant would place reliance on the decision of the Hon'ble Supreme Court in *W.B.State Electricity Board and Others Vs. Sachin Banerjee* and Others reported in (1999) 9 SCC 21, where the Hon'ble Supreme Court held that when the victims died because of an illegal hooking, the electricity cannot be held the guilty of negligence. In *M.P.Electricity Board Vs. Shail Kumari and Others* reported in (2002) 2 SCC 162, the Hon'ble Supreme Court held that even assuming all safety measures had been adopted, when a person undertakes an activity involving hazardous or risky exposure to human life, such person is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertaking. The liability is based on foreseeable risk inherent in the undertaking and is also known, in law, as "strict liability". It differs from the liability which arises on account of that negligence or fault where foreseeable harm could be avoided by taking reasonable precautions.



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13.The learned counsel for the 7th respondent/1st defendant would contend that there has been delay in filing the FIR and apart from the FIR, there is absolutely no evidence to show that the 1st defendant was responsible for the electrocution death of Kotti @ Ramalingam.

14.He would also place reliance on the decision of the Hon'ble Supreme Court in *Madhya Pradesh Electricity Board and Others Vs. Basantibai* reported in *AIR 1988 SC 71* where the Hon'ble Supreme Court held that when a cyclist stepped on a live wire and got electrocuted instantaneously, and dying within minutes, the Hon'ble Supreme Court held that the Electricity Board cannot take umbrage under doctrine of strict liability even though there was clandestine theft of electricity from the main supply line holding that merely because the legal act was attributable to a stranger which was not sufficient to uphold liability of the board regarding line wires lying on the roads. I do not find this decision actually helping the case of the 1st defendant for the simple reason that the death in the instant case was not on a public road but only in a private land.



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15.The learned counsel for the plaintiffs would seek for confirmation of the judgment of the First Appellate Court which is well merited and does not deserve any interference, there being no illegality or perversity.

16.In fact, the learned counsel for the plaintiffs would place reliance on decision of this Court in *The Superintending Engineer, Cuddalore Electricity Distribution Circle, Tamil Nadu Vs. Sundari and Others* reported in **2009-4-L.W.327** where this Court held that it is garden principle that the Electricity Board officials were expected to go on rounds and see whether there is any misuse of electricity supply and even though there was a live wire fencing to protect the field, since the officials of the Electricity Board were not vigilant enough, they could not wriggle out of liability.

17.Interestingly, it is to be noted that though a joint and several decree has been passed against the both the defendants, only the Electricity Department has preferred the present Second Appeal. The 1st defendant has accepted the verdict of the First Appellate Court and has not chosen to challenge the same by way of Second Appeal. Therefore, I do not deem it fit and proper to permit the 1st defendant/7th respondent herein to canvas the



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correctness of the findings of the First Appellate Court, ultimately, granting a decree, joint and several, against the defendants 1 and 2. In fact, I also find that the appellant/Electricity Board has only deposited its share of Rs.3,00,000/- at the time of admission of the Second Appeal. In fact, it is also seen from the grounds of appeal that the challenge is only to the joint and several decree passed and according to the appellant, the entire amount of Rs.6,00,000/- ought to have been decreed against the 1st defendant without implicating the board to any liability whatsoever.

18.However, in view of the judgment of this Court in the ***Superintendent Engineer, Cuddalore Electricity Distribution Circle Tamil Nadu'*** case and also the judgment of the Hon'ble Supreme Court in ***M.P.Electricity Board's*** case, where the Hon'ble Supreme Court discussing the doctrine of strict liability laid down, relying on ***Rylands V. Fletcher*** and also the observation of the Privy Council in ***Quebec Rly., Light, Heat and Power Co. Ltd. V. Vandry*** that merely because the illegal act could be attributed to a stranger, it is not enough to absolve the liability of the Board regarding the live wire lying on the road and the appeal filed by the Madhya Pradesh Electricity Board was ultimately dismissed by the Hon'ble Supreme



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Court. Moreover, here, the Electricity Board has also not challenged the quantum or its liability. The Board is only aggrieved by the joint and several decree passed against the defendants.

19.However, as laid down by this Court in *The Superintending Engineer, Cuddalore Electricity Distribution Circle, Tamil Nadu's* case, almost in identical circumstances, this Court held that Electricity Board officials are expected to go on regular rounds and ensure that there is no misuse or theft of electricity and therefore, they cannot be exonerated from liability and this Court held that there was no warrants to interfere with the joint and several liability of the defendants to pay compensation. The facts of the present case are also very similar and I see no reason to differ with the principles adopted and laid down by this Court in the said case. In fine, the substantial questions of law are answered against the appellant.

20.In view of the above, the Second Appeal is dismissed with the following directions:

(i) The appellant/Electricity Department shall not be liable to pay any further amount and a sum of Rs.3,00,000/- already deposited by them at the time of admission of the Second Appeal, together with interest accrued



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thereon, if any, shall be withdrawn by the plaintiffs / respondents 1 to 6.

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(ii) The 7th respondent namely the 1st defendant shall deposit a sum of Rs.3,00,000/-, being the balance decree amount within a period of eight weeks from the date of receipt of a copy of this judgment and if such deposit is made within a period of eight weeks then, the compensation amount of Rs.3,00,000/- being the share of the 7th respondent/1st defendant shall not carry any interest. However, if there is any delay in depositing/paying the said amount to the respondents 1 to 6, beyond the period of eight weeks from the date of receipt of a copy of this judgment then, the 1st defendant shall be liable to pay interest at 6% per annum from the date of filing of the suit namely, on 04.01.2007 till the date of payment.

(iii) There shall be no order as to costs. Connected miscellaneous petition is closed.

28.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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Note : The Registry is directed to carryout necessary amendments in the cause title.



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To

- 1.The Principal District Judge, Krishnagiri.
- 2.The District Munsif cum Judicial Magistrate, Uthangarai.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI., J.

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Pre-delivery judgment made in
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