

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA-814-1996 (O&M)

Date of order: 16.01.2024

Inder Singh

.....Appellant(s)

Vs.

Punjab State Electricity Board, Patiala & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gulshan Sharma, Advocate
for the appellant.

Mr. Yash Pal Khullar, Advocate and
Mr. Rajiv Sharma, Advocate
for the respondents.

Nidhi Gupta, J.

Present second appeal is filed against the judgment and decree dated 11.12.1995 passed by learned Additional District Judge, Ferozepur; whereby the judgment and decree dated 25.11.1993 passed by learned Additional Senior Sub Judge, Ferozepur, has been reversed. The appellant before this Court is the plaintiff.

2. The case as set up by the appellant-plaintiff is that his buffalo died due to electrocution after coming into contact with a stray wire of the electric pole installed by the respondents-defendants in front of his house. It has further been averred in the plaint that the electric pole in question had been uprooted due to high velocity storm and thereafter, the respondents-defendants i.e. the Punjab State Electricity Board, had repaired it only temporarily.

3. Learned counsel for the appellant submits that as the respondents-defendants failed to properly repair the electric pole in front of the appellant's house, his buffalo came in touch with the stray wire and was electrocuted resulting in its death, causing great loss to the appellant. In support of his contention, Learned counsel refers to the facts and evidence as recorded by the learned trial Court in Para 8 of its judgment and decree dated 25.11.1993, which are reproduced hereinbelow:-

"8. Regarding these issues, the learned counsel for the plaintiff has drawn my attention towards the statement of (PW 2) Jaswant Singh, (PW 3) Niyamat and PW 5 Inder Singh, who have all deposed on oath that there is an electric pole installed in front of the house of the plaintiff which was got uprooted about two years ago in a high velocity storm. It was not properly maintained by the PSEB authorities later and it was temporarily restored to its earlier position by tying it to a neem tree. It had not been properly insulated. It was sheer negligence of the PSEB authorities. Due to the negligence of the PSEB authorities in maintaining the electric pole the buffalo belonging to the plaintiff got in touch with stray wire of the electric pole in question and died of electrocution. The learned counsel for the plaintiff has drawn my attention towards the statement of Doctor Vikram Singh, Veterinary officer PW 4 and his postmortem report is Ex.PW 4/A and has argued that the cause of death has been proved by the medical witness. He has also drawn my attention towards the statements of PWs aforesaid and the statement of Doctor Vikram Singh who has opined that in his opinion the market price of buffalo in question was around Rs.9,000/-. The learned counsel for the plaintiff has argued that the buffalo belonging to the plaintiff has died due to the negligence of the PSEB authorities in maintaining the electric pole and therefore, the plaintiff is

entitled to recover compensation amounting to Rs.15,000/- towards damages”.

4. Learned counsel submits that accordingly, from the facts noted hereinabove as also from the testimony of the expert witness PW4, it is very clear that the appellant's buffalo had died due to the negligence of the respondents-defendants; and therefore, the judgment and decree of the learned First Appellate Court deserves to be set aside.

5. Learned counsel for the appellant further submits that interest @ 6% has been granted to the appellant and since, the appellant is a poor man, it has far-reaching pecuniary significance for him.

6. On the other hand, learned counsel for the respondents submits that the date of death of the buffalo was 11.07.1991 whereas the postmortem of the buffalo was conducted two months thereafter on 12.10.1991. It is contended that accordingly the post-mortem report is unreliable and deserves to be discarded.

7. Learned counsel further refers to findings of learned First Appellate Court as contained in Para 8 of the judgment and decree dated 11.12.1995, which are reproduced hereinbelow:-

“8. After hearing to the learned counsel for the parties at length and perusing the record of the trial court, this court is of the considered view that the trial court erred in recording findings under issue No.1 that death of she buffaloe which he snapped was actually in contact with the electric wire and at a distance of five feet a transformer was lying fallen and he had snapped the photographs in a plain but it was not in the field. This witness, however, admitted that the photographs Ex.PW 6/1 to Ex.PW 6/3 do not show the touch of electric wire with the buffaloes. The statement of Hamesh Sharma (PW6) shows

that an attempt has been made before the trial court to produce false record of taking photographs of the she buffalo on question. The perusal of photographs Ex.PW 6/1 to Ex.PW 6/3 and close scrutiny of the statement of PW 6, who was ushered into the witness box, shows that the same do not relate to the she buffalo in question because in these photographs neither the fallen transformer is visible nor the buffalo in contact with electric wire is visible (sic)".

8. Learned counsel for the respondents submits that in view of the above uncontroverted findings of the learned First Appellate Court, the present appeal deserves to be dismissed.

9. No other argument is raised on behalf of the parties.

10. I have heard learned counsel for the parties.

11. Without adverting to the matter on merits, it is to be noted that a perusal of the plaint filed by the plaintiff-appellant shows that the same was simpliciter a "*Suit for recovery of Rs.9,000/-*". In fact, in Para 10 thereof it has been averred as follows:-

"10. That although the plaintiff is entitled to compensation of Rs.15,000/- yet he is claiming Rs.9,000/- and relinquishes his claim over remaining amount".

(Emphasis added)

12. It is therefore, not denied that the appellant's suit was for recovery of ₹9000/- only.

13. In these facts and circumstances, reference be made to the judgment of the Hon'ble Supreme Court in "**Nagarpalika Thakurdwara Versus Khalil Ahmed & Ors.**" Law Finder Doc Id # 793552, wherein it has been held as follows:-

“B. Civil Procedure Code, 1908 Section 102 of Civil Procedure Code, no second appeal would lie from any decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/- - The purpose behind enactment of Section 102 of CPC is to reduce the quantum of litigation so that courts may not have to waste time where the stakes are very meagre and not to much consequence”.

14. Para 15 of the aforesaid judgment is also relevant, which is reproduced hereinbelow:-

“15. So as to avail advantage of the provisions of Section 102 of the CPC, the subject matter of the original suit should be only recovery of money and that too, not exceeding Rs. 25,000/-. If the subject matter of the suit is anything other than recovery of money or something more than recovery of money, provisions of Section 102 of the CPC cannot be invoked”.

15. Counsel for the appellant is unable to controvert this clear position in law. Accordingly, the present second appeal is not maintainable, and the same is hereby **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

16.01.2024
Sunena

(Nidhi Gupta)
Judge

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