

2024.PHHC.143319



254.

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

RSA No.6470 of 2018 (O&M)

Date of decision: 02.05.2024

Sharmila and others

.... Appellants

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Anoop Kumar Yadav, Advocate, for the appellants.

Mr. Madhur Singh, Advocate, for respondents No.1 to 3.

GURBIR SINGH, J.

CM-18190-C-2018

Prayer in the application filed under Section 5 of Limitation Act is for condonation of delay of 271 days in filing the present appeal.

For the reasons mentioned in the application, same is allowed and delay of 271 days in filing the appeal is condoned.

RSA No.6470 of 2018

1. Present regular second appeal has been filed by the plaintiffs seeking modification in the judgment and decree dated 12.10.2017 passed by learned Additional District Judge, Narnaul, whereby the appeal filed by the plaintiffs in a suit seeking compensation on account of death of Shish Ram due to electrocution, has been accepted.

2. The parties herein are being addressed as per their status before the trial Court.

2.1 Brief facts of the case are that the plaintiffs filed a suit seeking damages to the tune of Rs.20 lakhs along with interest @ 12% per annum from the date of incident till payment, on account of death of Shish Ram (husband of plaintiff No.1, father of plaintiffs No.2 and 3, son of proforma defendants No.4 and 5). The plaintiffs pleaded that Shish Ram was an agriculturist and running a dairy and used to earn Rs.10,000/- per month. On 13.11.2018 at about 09:30 PM, Shish Ram went to his fields for irrigation purpose and when he was laying plastic pipe for that purpose, he came in contact with stay wire of electric pole standing in his fields. He was electrocuted. He raised alarm and his father Rohtash, paternal uncle Siri Ram and Bir Singh reached there and rescued him with the help of lathis. He was taken to Kailash Hospital, Behror, District Alwar (Rajasthan) for treatment where he was given first-aid and was referred to SMS, Jaipur for better treatment and was admitted there. He died on 19.11.2008 due to the injuries suffered due to electrocution. The plaintiffs pleaded that the matter was reported to the police after 15 days of the incident as they were busy in performing ceremonial social customs. Plaintiffs further pleaded that deceased was electrocuted due to the negligence of defendants No.1 to 3, as they did not ensure that electric current passes through stay wire which was fixed for supporting the electric pole fixed in the fields of Shish Ram.

2.2 Upon notice, defendants No.1 to 3 appeared and filed joint written statement and contended that Shish Ram was unemployed and had no source of income, as pleaded by the plaintiffs. It was stated that Shish Ram was electrocuted due to his own negligence because no person was authorized for redressing electric complaint on his behalf without PTW (permit to work) on concerned line through responsible J.E. No complaint regarding fuse blown off/jumper broken etc. was received by the office of defendants No.1 to 3. It was pleaded that all safety equipments were installed in the electric poles and stay wire, and these were properly maintained by the department as per required standards.

2.3 Proforma defendant No.4 died during pendency of suit. Defendant No.5 filed written statement admitting the claim of plaintiffs.

2.4 Issues were framed and the evidence of respective parties was recorded.

2.5 After appreciating the evidence on record, the trial Court vide judgment and decree dated 26.02.2015 dismissed the suit of the plaintiffs by observing that Shish Ram had not died due to electrocution from the stay wire. It was held that there was delay in reporting the matter to the police, as the incident took place on 13.11.2008 and the deceased remained under treatment till 19.11.2008 but the matter was reported to the police on 07.12.2008. The relevant extract of said findings reads as under:-

“23. I have given considerable thought to the arguments advanced by both the parties. It is pertinent to note that the onus to prove that Shis Ram was electrocuted as he came into

contact with the stay wire erected for the purpose of support of the electric poles in his fields while he was laying pipe for irrigation purpose was upon the plaintiff. It is also noteworthy that the statements of PW2 Smt. Sharmila and PW4 Satpal in above-said regard are not trustworthy as they stated during their respective cross-examinations that they were not present at the spot at the time of alleged incident. It is further significant to note that the alleged incident occurred on 13.11.2008 and the deceased was under treatment till 19.11.2008. However, no report regarding the negligence of defendants no.1 to 3 was lodged before the police by the injured, his relatives or Siri Chand and Bir Singh who were eye witnesses to the incident. It is also worthwhile to note that at the time of admission of injured in the hospital if the persons who got the injured admitted in the hospital would have reported the negligence on the part of defendants no.1 to 3 as a cause of injuries on the person of Shish Ram, the concerned doctor would also have sent a ruqa to the police and the police would have recorded the statement of injured or his relatives. However, no such report was made. It is further relevant to note that the record of Kailash Hospital, Behror, District Alwar, Rajasthan where the injured was first taken for medical treatment has not been proved. It is also important to note that in the report under Section 174 Cr.P.C. which is Ex.P-15 to Ex.P-17 it is mentioned that during enquiry by the police officer it was revealed that the deceased was electrocuted as he was repairing the fuse of the transformer. In given scenario and in view of settled proposition of law that man may tell but circumstances do not, the statements of PW5 Siri Chand and PW 7 Bir Singh does not inspire the confidence of the Court. Consequently, it cannot be concluded that

husband of plaintiffs no.1 and father of plaintiffs no. 2 and 3 namely Shish Ram died due to electrocution from the stay wire which was erected for the support of electric pole Installed in his fields.”

2.6 In appeal filed by the plaintiffs, said findings of the trial Court were reversed vide judgment and decree dated 12.10.2017 by holding that Shish Ram died due to electrocution and the negligence of the defendants was proved. The deceased was proved to be an agriculturist and his income was assessed as Rs.10,000/- per month. The plaintiffs were awarded Rs.13,60,068/- as compensation. The relevant extract of said findings is as under:-

“19. After scanning the evidence placed on record, it is proved that Shish Ram died due to electrocution and whole family of the deceased was dependent upon his (since deceased) income, who got electrocution on 13.11.2008. The documentary evidence placed on file by the defendants is not sufficient to brushed aside the stand of the plaintiffs. Evidence placed on file by the plaintiffs is convincing, clinching and sufficient to establish that Shish Ram died due to electrocution and negligence of the defendants is also proved.

20. Now to come upon the quantum of compensation. Law is well settled that for determination of compensation the principle adopted in Motor Vehicles Act can be adopted. It is pleaded that deceased Shish Ram used to do agricultural work etc. There is documentary proof in the shape of jamabandies Ex.P11 to Ex. P13, which shows that father and grandfather of Shish Ram is having the agricultural land. Even otherwise, in these days, a labour is also fetching amount of Rs.9,880/- per

month, which is approximate to Rs.10,000/-. Hence, it is reasonable to hold monthly income of deceased as Rs.10,000/- per month.

21. As far as the age of the deceased is concerned, in the copy of MLR Ex. P1, it is mentioned as 25 years. In the medical record his age is mentioned as 30 years. After taking in to consideration said documents, his age is taken to be 30 years.

22. As per Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) RCR Civil 77 SC, where number of dependent family members are 2 to 3, deduction should be 1/3rd. So, after deducting 1/3rd i.e. 3,333/-, the remaining amount would be Rs. 6,667/-, thus, the annual dependency would be Rs.6,667X12=80,004/-. As per Smt. Sarla Verma (Supra), the multiple of 17 in this case will be applicable. Hence, after applying said multiple, the amount would be Rs.13,60,068/-. Therefore, the total amount of compensation is Rs.13,60,068/-. The plaintiffs, who are legal heirs of deceased Shish Ram are entitled to Rs.13,60,068/-, as compensation from the defendants. Defendants No. 1 to 3 are jointly and severally liable to pay amount of compensation to the plaintiffs.

23. As a sequel to the above said discussion, appeal is hereby accepted. Decree sheet be prepared accordingly. The trial court record along with copy of this judgment be sent back. Appeal file be consigned to record room after due compliance.”

3. Learned counsel for the appellants-plaintiffs has argued that there were five dependents upon the deceased, so deductions should have been taken as 1/4th instead of 1/3rd. Future prospects, loss of love and

affection, funeral expenses, transportation have not been provided. So, the appellants have prayed that the amount of compensation so awarded to the appellants be enhanced.

4. Learned counsel for the respondents-defendants has argued that since the plaintiffs failed to prove their case, the trial Court rightly dismissed the suit. The learned lower appellate Court has wrongly held that Shish Ram died due to electrocution and the respondents are responsible for the same. The plaintiffs failed to make out any case of negligence on the part of the defendants.

4.1 Learned counsel for the respondents-defendants has further argued that the present appeal is not maintainable as the plaintiff-Sharmila had already given an affidavit dated 07.05.2018 (Annexure R-2) to the effect that she had received full and final compensation amount of Rs.13,60,068/- and in future, she and her children will neither claim any further compensation from the respondents department nor file any appeal.

5. I have heard the submissions of learned counsel for the parties.

6. Admittedly, Shish Ram died due to electrocution as per copy of PMR Ex.P1. It was rightly held by the courts below that it is the duty of the Electricity Board to supply electricity in the particular locality and if such supply causes injury or death to someone who unknowingly is trapped into it, the primary liability is of the Electricity Board to compensate the sufferer. The concerned official is duty bound to ensure that no wire should remain live. The defendants have not filed any appeal and have not

challenged the finding regarding negligence recorded by the court below that Shish Ram died due to the negligence on the part of the defendants. This Court also does not differ with said finding.

6.1 The learned lower Appellate Court has relied upon the formula which is generally adopted by the courts for assessing compensation on account of death in motor vehicle accident and placed reliance on case ***Sarla Verma and others Versus Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 SC***. By now, law is well established that in case of death in motor vehicle accident which has resulted on account of negligent driving of the driver of offending vehicle, the formula which is used for assessing the amount of compensation in said cases can certainly be used on account of death due to negligence for assessing compensation in a civil case. Thus, this Court is of the view that in civil cases also, said formula should be adopted for assessing the amount of compensation on account of death due to negligent act.

6.2 In the case in hand, the learned lower appellate Court failed to take into consideration that number of dependents upon the deceased were five including father and mother of the deceased, who are old persons. Although there is no evidence that father was fully dependent upon the deceased for his livelihood but in the absence of any evidence, mother cannot be said to be not dependent upon the deceased. So, it can be concluded that there were four persons, who were fully dependents upon the deceased. Thus, deductions which were required for personal expenses

should be 1/4th instead of 1/3rd. The learned court below failed to take note that dependants of the deceased are also entitled for compensation on account of future prospects in view of the law laid down by the Hon’ble Supreme Court in *National Insurance Company Versus Praney Sethi and others, 2017 (4) RCR (Civil) 1009*. So, the amount of compensation is required to be enhanced.

6.3 As per jamabandies Exs.P11 to P13, the deceased was an agriculturist and his income was rightly assessed as Rs.10,000/- per month. At the time of death, the deceased was 30 years of age. By adding 40% future prospects to the income of the deceased and the amount under conventional heads, the amount of compensation is reassessed as under:-

	Date of death	19.11.2008
Age of deceased	30 years	
Claimants	Wife and two children	
Employment	Agriculturist	
Sr. No.	Head	Amount
1.	Income	Rs.10,000/-per month.
2.	Add 40% on account of future prospects	Rs.14,000/- (10,000+4,000)
3.	Deduction 1/4 th as number of dependents are four	Rs.10,500/- (14,000-3500)
4.	Annual	Rs.10,500x 12=Rs.1,26,000
5.	Multiplier	17
6.	Loss of dependency	Rs.21,42,000/- (1,26,000 x 17)
7.	Loss of consortium	Rs.48,400/-
8.	Loss of estate	Rs.18,150/-
9.	Funeral expenses	Rs.18,150/-
	Total	Rs.22,26,700/-
	Compensation granted by the lower Appellate Court	Rs.13,60,068
	Compensation enhanced	Rs.8,66,632/-

7. In view of above, the judgment and decree dated 12.10.2017 passed by the lower Appellate Court is modified to the above extent and the

enhanced amount shall be disbursed amongst the appellants-claimants in the manner already indicated in the said judgment. The enhanced amount will carry interest @ 7.5% from the date of this order till date of payment.

- 8. Appeal stands disposed of accordingly.
- 9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

May 02, 2024
sanjeev

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