

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14121 OF 2023

INTERIM APPLICATION NO. 14119 OF 2023

IN

SECOND APPEAL ST NO. 20391 OF 2023

Maharashtra State Electricity City
Distribution Company Ltd and ors

.....Applicants

Vs.

Anita Shivaji Sutar and ors

.....Respondents

Mr. A. R. S. Baxi Advocate for the Applicants

Mr. Satyajeeet Rajeshirke Advocate for the Respondents

CORAM : GAURI GODSE, J.

DATE : 13th JANUARY 2025

IRESH
MASHAL

ORDER:

INTERIM APPLICATION NO. 14121 OF 2023:

1. Heard learned counsels for the parties. This interim application is for condonation of delay in filing the second appeal. There is no serious opposition to the reasons stated for condonation of delay.

2. In the facts and circumstances of the case, delay is condoned and the application is allowed.

SECOND APPEAL ST NO. 20391 OF 2023:

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3. Heard learned counsels for the parties on the merits of the second appeal.

4. Learned counsel for the appellants submits that both the Courts failed to appreciate that the accident occurred because the deceased took support of the wire attached to the pole as he was carrying fodder and he required support. She submits that the deceased touched the wire because he required support and thus, there is contributory negligence on the part of the deceased. She submits that there is no dispute that the deceased was carrying fodder on his head and he slipped due to loss of balance and thus took support of the wire. She submits that the support taken of the earthing wire is sufficient to hold that there was contributory negligence on the part of the deceased. She therefore submits that the reasons recorded by both the Courts in disbelieving the contributory negligence would require consideration by this Court as it raises substantial question of law.

5. Learned counsel for the appellants further submits that the quantification of the compensation amount is without any supporting evidence. She submits that the quantification is based on assumption that the deceased was a skilled worker. She, thus, submits that in absence of any supporting evidence of income; quantification done by

both the Courts is not acceptable. She, thus, submits that the second appeal would also require consideration on the incorrect quantification made by both the Courts in the absence of any supporting evidence.

6. Learned counsel for the respondents supports the impugned decree. He submits that there was no evidence produced on record to indicate that the earthing wire due to which the accident occurred was installed after following procedure as per the rules. Learned counsel also relies upon the inspection report filed on behalf of the defendants which supports the plaintiffs' contention that the accident occurred due to negligence on the part of the defendants.

7. On the ground raised on quantification of the income, learned counsel for the respondents submit that sufficient evidence was placed on record to support the quantification. He submits that both the Courts have rightly considered the principles of The Minimum Wages Act, 1948 and arrived at an amount of compensation based on the well settled legal principles.

8. To examine the rival submissions made on behalf of both parties, I have perused the reasons recorded in both the judgments. Both the Courts have concurrently held that the cause of death of the deceased

due to electrocution was due to the negligence on the part of the defendants. The report of the electric inspector placed on record was relied upon by both the Courts to record findings on the negligence on the part of the defendants. The defence is based on the allegation of contributory negligence on the ground that the deceased slipped due to fodder carried by him on his head and thus, it was the deceased who took help of the earthing wire for support. Except for this allegation on the contributory negligence, nothing is produced on record to indicate that the earthing wire was installed by following due procedure and after taking all the required precautions as per the procedural rules for installing the earthing wire.

9. Unfortunately, the defendants have gone to the extent of disputing the cause of death of the deceased. However, after considering the documentary evidence on record, both the Courts have accepted the cause of death due to electrocution by earthing wire installed by the defendants. I see no substance in the arguments raised on behalf of the appellants that there would be contributory negligence on the part of the defendants. In the absence of any supporting evidence regarding installation of the wire as per the rules, cause of death due to the negligence accepted by both the Courts on

the part of the defendants cannot be faulted.

10. Even on the ground of quantification, both the Courts have thoroughly examined the oral evidence on record. Both the Courts have arrived at a conclusion based on the well settled legal principles for quantification as per the Motor Vehicles Act, 1988 and The Minimum Wages Act, 1948. I do not find any legality or perversity in the reasons recorded by both the Courts on quantification of the amount of compensation.

11. In the absence of any supporting evidence by the defendants on proper installation of the earthing wire, it is unfortunate that the decree for compensation awarded to the heirs and legal representatives of the deceased is challenged by the defendants on the ground of contributory negligence and quantification of amount .

12. The concurrent findings recorded by both the Courts are based on correct appreciation of evidence on record. The findings of facts recorded by both the Courts would not require any consideration by this Court, as there is no illegality or perversity in the reasons.

13. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

14. In view of dismissal of second appeal, all pending applications stand disposed of as infructuous.

[GAURI GODSE, J.]