



A.S.Nos.33 of 2024 and 40 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2025

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.Nos.33 of 2024 and 40 of 2023

A.S.No.33 of 2024

The Executive Officer
Elampillai Town Panchayat
Elampillai
Salem
Erode Taluk

.... Appellant

Versus

- 1.K.Palaniappan
Son of Kaliappan
2. Kannammal
Wife of K.Palaniappan
3. The Block Development Officer
Veerapandi Union
Salem District
4. The Assistant Engineer (O& M)
TANGEDCO
Elampillai
5. The Executive Engineer (O &M)
TANGEDCO
Vempadithalam

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6. The Superintending Engineer
TANGEDCO
Udayapatty
Salem District

7. The District Collector
Collector Office
Salem

....Respondents

First Appeal filed under Section 96 of Civil Procedure Code, 1908 against the judgment and decree dated 21.12.2018 made in O.S.No.63 of 2017 (P.O.P.No.76 of 2016) on the file of II Additional District Court, Salem.

For Appellant ... Ms.K.Indupriya

For Respondent ... Mr.L.Ramanathan for R1 and R2

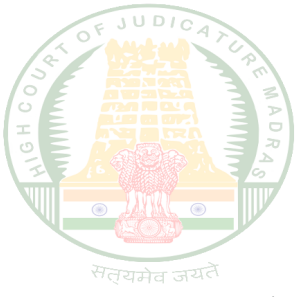
Mrs.R.Anitha
Special Govt. Pleader for R3 and R7

Mrs.J.Hemalatha Gajapathy
Standing counsel for R4, R5 and R6

A.S.No.40 of 2023

1. The Assistant Engineer (O& M)
TANGEDCO
Elampillai

2. The Executive Engineer (O &M)
TANGEDCO
Vempadithalam



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For Respondent ... Mr.L.Ramanathan for R1 and R2

Mrs.R.Anitha
Special Govt. Pleader for R3 and R5

Ms.K.Indupriya for R4

COMMON JUDGMENT

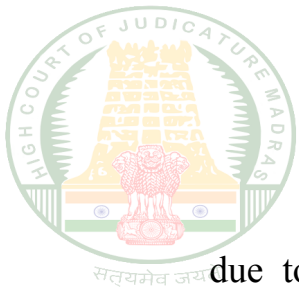
Aggrieved over the judgment and decree of trial Court directing the defendants jointly and severally to pay a sum of Rs.10,90,000/- along with interest at 6% as compensation to the plaintiffs, who are the parents of the deceased, these appeals have been filed.

2. The parties are referred to as per their ranks before the trial Court.

3. A.S.No.33 of 2024 is filed by the second defendant in the suit and A.S.No.40 of 2023 is filed by the Defendants 3 to 5 in the suit. Since both appeals arise out of the same judgment, both the appeals are taken up and heard together and are being disposed of by this common judgment.

4. Brief facts leading to filing of case is as follows:

Plaintiffs' younger son Mohanraj, who was aged about 28 years, died



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due to leakage of electricity in high power tower post at Santhaipettai, Elampillai in the morning of 23.08.2015 and an FIR came to be registered in Crime No.498 of 2015 on 24.08.2015 on the complaint lodged by the parents of the deceased. The investigation also establishes the fact that the death was due to electrocution. It is the case of the plaintiffs that high power tower was under the control of Defendants 1 to 4 and as the tower had not been maintained, the leakage had happened and therefore, defendants 1 to 4 are liable to pay compensation to the plaintiffs.

5. The fifth defendant filed a written statement and the same was adopted by defendants 1 to 4 and 6. It is their contention that alleged police complaint dated 24.08.2015 would establish the fact that cause of death of Mohanraj was suspicious. It is the case of the defendants that the death was not due to electrical short circuit as stated by the plaintiffs rather the death has occurred due to the negligence on the part of the deceased Mohanraj and therefore, the plaintiffs are not entitled to get any compensation.

6. Based on the above pleadings, the following issues were framed by the trial Court:

i) Whether the death of Mohanraj occurred due to the negligence on the part of the defendants?



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ii) Whether the plaintiffs are entitled to get compensation

iii) To what other relief?

7. In the trial, on the side of the plaintiffs two witnesses were examined as PWs 1 and 2 and Ex.A1 to Ex.A11 were marked and on the side of the defendants, two witnesses were examined as DWs 1 and 2 but no documents were marked.

8. After trial, the trial Court decreed the suit in part and directed the defendants to pay jointly and severally a sum of Rs.10,90,000/- as compensation to the plaintiffs along with interest at the rate of 6% per annum. Challenging the said judgment, these two appeals have been filed.

9. It is the contention of the appellants in A.S.No.40 of 2023 that trial Court has proceeded as if the electric power post is being maintained by TANGEDCO however the posts are maintained only by the local authorities. Therefore, fixing the liability on TANGEDCO to pay the compensation is not proper. It is their further contention that trial Court fixed the income of the deceased at Rs.10,000/- per month without any evidence. According to the appellants, the death was due to electrocution has not been established and in the post-mortem report, initially there is no mention that the deceased



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died due to electrocution, but only later it is stated by the doctor that the deceased appeared to have been died due to 'electrocution'. That apart, FIR would indicate that death was due to suspicious circumstances. Therefore, the finding of the trial Court that death was due to electrocution is not sustainable.

10. Per contra, the learned counsel appearing for the plaintiffs would submit that the death was due to electrocution has been clearly established not only through the evidence of the medical officer but also it is admitted by the third respondent in their reply. The learned counsel for plaintiffs further submitted that trial Court has also adopted only notional income to arrive at the compensation which does not require any interference. Once it is established that there was leakage of electricity in the electric post, the respondent cannot avoid liability and therefore, prays for dismissal of the appeal.



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11. In the light of the above submissions, now the points arise for consideration are as follows:

- i) Whether the death of plaintiffs' son was due to electrocution?*
- ii) Whether the defendants are not liable to pay compensation?*
- iii) Whether the quantum of compensation arrived is proper?*
- iv) To what relief the parties are entitled?*

Point No.1:

12. The suit has been laid for compensation on account of death of plaintiffs' son due to electrocution. The case of the plaintiffs is that on 23.08.2015, their son was found dead due to electricity leakage at Santhaipettai, Elampillai. The plaintiffs have also narrated the facts about filing of FIR and post-mortem report. Ex.A1-FIR filed initially by the parents would show that the plaintiffs' son was found dead near a high power tower post, which led to the filing of FIR. Thereafter, post-mortem was conducted and medical officer was examined as PW2. Medical Officer, who conducted autopsy on the body of the deceased, has clearly spoken in his evidence that the deceased died due to electrocution. It is also relevant to note that Ex.A5 is the reply given by the third defendant to the legal notice where he has clearly admitted that on the date of accident, he inspected the



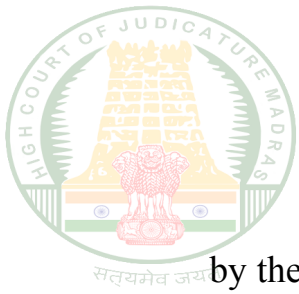
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place of occurrence and checked the high power tower and found that there was electricity leakage and he has also informed the Executive Officer to set right that leakage. Therefore, the very admission of the TANGEDCO Officer under Ex.A5 coupled with the evidence of Medical Officer clearly proves the fact that the deceased died only due to electrocution. As there was an inspection on the same day of death of deceased, where pilferage was notified and medical evidence proves the electrocution death, it has to be held that the death was only due to the leakage of electricity from the high power tower. Though the third defendant is blaming the Executive Officer for not maintaining the high power tower, the fact remains that there was leakage of electricity from the high power tower which resulted in death of the deceased.

Point No.2:

13. It is well settled that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused to any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident. When electricity is supplied by TANGEDCO, now they cannot just blame the Executive Officer on the ground that since the tower is being maintained



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by the local authority, the liability has to be fastened upon them. It is for the supplier to ensure that there was no leakage of electricity. They cannot attribute negligence on the part of the deceased or any other party. The rule of strict liability will certainly come to play in these types of cases. The Apex Court in ***M.P.Electrivity Board Vs. Shail Kumari and others*** reported in **(2002) 2 SCC 162** held as follows:

'8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, 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 undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of



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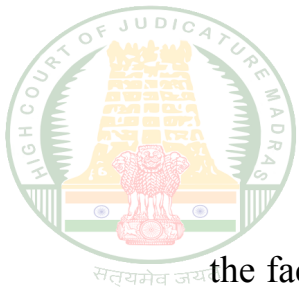
Rylands v. Fletcher (1868 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

14. Therefore, once leakage of electricity has been established by oral admission of the Department under Ex.A5 and the death was due to electrocution also has been clearly established by PW2, the forensic medical officer who has conducted autopsy over the dead body and found that there was burn injuries due to electrocution and he has finally opined that the death was due to electrocution, it is too late for the defendants to contend that the death of the deceased was not due to electrocution.

Point No.3:

15. The other contention raised by the appellants/defendants is that the trial Court ought not to have adopted notional income. According to the appellants/defendants, there was no material available on record to prove the nature of the income of the deceased at the relevant point of time. The trial Court has adopted notional income of Rs.10,000/- per month. Considering



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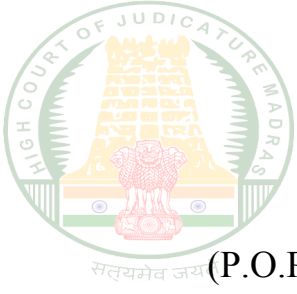
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the fact that the deceased was a bachelor at the time of death, 50% has been deducted towards personal expenses and monthly income has been taken as Rs.5000/- and multiplier of 17 is applied. The trial Court after awarding the compensation under various heads including love and affection, granted compensation of Rs.10,90,000/- with interest at the rate of 6% from the date of suit till the date of realization.

16. It is now well settled that if the income of the victim or deceased has not been established, normally notional income will be taken note of. The deceased was aged about 28 years. The accident took place in the year 2015. Therefore, applying the Minimum Wages Act, a person aged about 28 years would certainly earn more than Rs.10,000/-. In fact, the trial Court was fair in deducting 50% towards personal expenses considering the fact that the victim was a bachelor.

17. Hence, this Court is of the view that fixing Rs.10,000/- as notional income is reasonable considering the age of the deceased. Hence, the contention of the appellants that notional income taken is on the higher side is not sustainable.

This Court finds no merits in the appeal and the same is dismissed. The judgment and decree dated 21.12.2018 made in O.S.No.63 of 2017
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(P.O.P.No.76 of 2016) on the file of II Additional District Court, Salem is

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confirmed. There shall be no order as to costs.

28.02.2025

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To

1. II Additional District Court
Salem
2. The Section Officer
VR Section, Madras High Court



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N. SATHISH KUMAR, J

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