

Kseb vs Anil Kumar

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Court : Kerala

Decided On : Apr-06-2022

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : AS/104/2003

Appellant : KSEB

Respondent : Anil Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY,
THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944 AS NO. 258 OF 2002
AGAINST THE ORDER/JUDGMENT IN OS 30/1997 OF SUB COURT,ATTINGAL

APPELLANTS/DEFENDANTS 2 & 3: 1 RAMACHANDRAN PILLAI(DIED) LINE
MAN, OVERSEARS OFFICE, NAGRUR, KILIMANOOR,
THIRUVANANTHAPURAM DISTRICT. 2 SUBHASH CHANDRAN BOSE
OVERSEAR, OVERSEARS OFFICE,, NAGRUR, KILIMANOOR,
THIRUVANANTHAPURAM DISTRICT. *3 SARADAMMA (WIFE) RESIDING AT
ANU BHAVAN, KALLARA P.O., THIRUVANANTHAPURAM - 695608 *4 ANU
CHANDRAN

(SON) RESIDING AT ANU BHAVAN, KALLARA P.O., THIRUVANANTHAPURAM
- 695608 *5 ARUN CHANDRAN

(SON) RESIDING AT ANU BHAVAN, KALLARA P.O., THIRUVANANTHAPURAM
- 695608 LRS OF THE DECEASED A1 ARE IMPEADED AS ADDITIONAL A3
TO A5 AS PER ORDER DATED 12.6.19 IN IA 3/2019. BY ADVS.
SRI.M.BALAGOVINDAN SRI.P.M.JOSEPH RESPONDENTS/PLAINTIFF &
DEFENDANTS 1,4 &5: 1 ANIL KUMAR, S/O. VASUDEVAN, AGED 32 YEARS,
RESIDING AT ALUVILA VEEDU,, NEDUVELIWARD, VEMBAYAM VILLAGE,,
THIRUVANANTHAPURAM.

2 NARAYANAN NAIR, ASST. ENGINEER (DIED) ELECTRICAL SUB STATION,
KILIMANOOR. 3 C.N.CHANDRAN, CONTRACTOR PRIYANKA RESTAURANT,
NAGROOR, KILIMANOOR. 4 KERALA STATE ELECTRICITY BORD
REPRESENTED BY ITS SECRETARY, VAIDHYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM. ADDL.R5 RAJALEKSHMI, W/O. NARAYANA PILLAI,
NARAYANEEYAM, H.NO.413, CHAYAKUDI LANE, PALLIMUKKU, PETTAH P.O.,
THIRUVANANTHAPURAM-695 024. ADDL.R6 CHITHRA, D/O. NARAYANA
PILLAI, NARAYANEEYAM, H.NO. 413, CHAYAKUDI LAME, PALLIMUKKU,
PETTAH P.O., THIRUVANANTHAPURAM -695021

(THE LEGAL HEIRS OF DECEASED 2ND RESPONDENT ARE IMPEADED AS
ADDITIONAL RESPONDENTS 5 TO 6 VIDE ORDER DATED 06/04/2022 IN IA
5/2019). BY ADVS. SMT.LIGEY ANTONY - R1 SRI.L.MOHANAN - R1
SRI.P.SANTHALINGAM, SC, KSEB - R4 V.MADHUSUDHANAN - R5 & R6 THIS
APPEAL SUITS HAVING COME UP FOR HEARING ON 06.04.2022, ALONG
WITH AS.104/2003, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY,
THE 6TH DAY OF APRIL 2022 / 16TH CHAITHRA, 1944 AS NO. 104 OF 2003
AGAINST THE ORDER/JUDGMENT IN OS 30/1997 OF PRINCIPAL SUB

COURT,ATTINGAL

APPELLANT/DEFENDANTS 1 TO 4 IN THE OS: 1 THE KERALA STATE ELECTRICITY BOARD REP. BY ITS SECRETARY. 2 RAMACHANDRAN PILLAI (DIED), LINE MAN OVERSEAS OFFICE, NAGAROR, KILIMANOOR. 3 SUBHASH CHANDRA BOSE, OVERSEAR, OVERSEAS OFFICE, NAGAROOOR, KILIMANOOR. 4 NARAYANAN NAIR, ASST.ENGINEER, ELE.SUB STATION, KILIMANOOR. BY ADVS. SRI.C.K.KARUNAKARAN, SC FOR KSEB SRI.ARUNKUMAR A., SC, KSEB RESPONDENTS/PLAINTIFF/5TH DEFENDANT:

1 ANIL KUMAR S/O. VASUDEVAN, 22 YEARS, ALUVILA VEEDU, NEDUVILI WARD,, VEMBAYAM VILLAGE, THIRUVANANTHAPURAM. 2 C.N.CHANDRAN CONTRACTOR, PRIYANKA RESTAURANT, NAGAROOOR,, KILIMANOOR. ADDITIONAL

ADDL.R3 SARADAMMA, W/O.LATE RAMACHANDRAN PILLAI, RESIDING AT ANU BHAVAN, KALLARA P.O., THIRUVANANTHAPURAM ADDL.R4 ANU CHANDRAN D/O.LATE RAMACHANDRAN PILLAI, RESIDING AT ANU BHAVAN, KALLARA P.O., THIRUVANANTHAPURAM ADDL.R5 ARUN CHANDRAN S/O.LATE RAMACHANDRAN PILLAI, RESIDING AT ANU BHAVAN, KALLARA P.O., THIRUVANANTHAPURAM

THE LEGAL HEIRS OF DECEASED 2ND APPELLANT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 3 TO 5 VIDE ORDER DATED 28/06/2019 IN IA 2/2019. BY ADVS. SMT.LIGEY ANTONY SRI.L.MOHANAN THIS APPEAL SUITS HAVING COME UP FOR HEARING ON 06.04.2022, ALONG WITH AS.258/2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

AS.No.258 of 2002 is by the defendant 2 and 3 who are the officials under the Kerala State Electricity Board (for short KSEB). It is pertaining to the grant of compensation on account of the electric shock and injuries sustained by the plaintiff during the course of work conducted under the 5th defendant, contractor,

based on an Order issued by the KSEB Ext.A13. The work which were granted to the 5th defendant made mentioned in the schedule as item 1 to 15, which are extracted below for reference:-

1. Loading and unloading of Psc pole to the nearest location through deptl.lorry

2. Do-Tw ole-do-

3. Conveying Psc pole to an average distance of 0.5km by hand cart.

4. Do-TW pole - do-

5. Digging pole/stay pits of standard size in all classes of soil

6. Fitting and erecting Psc pole in position including back filling of pits

7. Do- Tw pole - do-

8. Dismantling and reprovding LT stays

9. Dismantling and damaged Rcc/Psc poles

10. Dismantling the damaged LT TW pole

11. Dismantling and redoing OH service line

12. Dismantling and redoing W/p service line

13. Steadying Rcc/Psc pole in position after digging pits and backfilling of pits

14. Reshackling of LT 3 phase line

15. Reshackling of LT SP line [SIC]

2. Going by the contract granted under the

local order to the 5th defendant, it is clear that no right of handling with supply of electric energy or its stoppage, continuance, maintenance, and control were given to 5th defendant. Necessarily, it should be understood that the control, supply, maintenance and stoppage of the electrical energy is vested with the KSEB, the 1

st defendant, who is responsible to take up all safeguarding measures while permitting the 5th defendant, the contractor, to do the work made mentioned in the local order Ext.A13.

3. It is an admitted case that such an

incident was happened due to the electric shock and the plaintiff fell down and sustained injuries and ultimately one of his legs was amputated till the knee. The defendant Nos. 2 and 3 came up in As.258/2002 challenging the liability extended by the trial court against them, though the 1st defendant, KSEB, is principally responsible for the wrong done, who is bound to take all the safeguarding measures while granting a work to the third person, the 5th defendant. The defendant Nos. 2, 3 and 4 are officials under the 1st defendant and if there is any negligence on their part or deficiency in service, it shall be dealt with in accordance with the departmental procedure by taking departmental action against the erring officers. Hence, the extension of liability against the defendant Nos. 2 to 4, who are the officials working under the 1st defendant, the KSEB, cannot be sustained. I am at a loss to understand what is actually granted by the trial court, whether it is a personal decree against the defendant Nos. 2, 3 and 4 or liability was extended to their respective officer. There may not be any doubt with respect to the liability vested with the KSEB, the 1st defendant and as such the decree granted imposing joint and several liability as against the defendant Nos. 2, 3, and 4 cannot be sustained. As such, the appeal- As.No.258 of 2002 will stand allowed by setting aside the decree and judgment of the trial court imposing personal liability as against the defendant Nos.2, 3 and 4.

4. The other appeal-As.No.104 of 2003 is

preferred by the 1st defendant on the ground that the 5th defendant was exonerated from the liability though the initial wrong came from the work done by the 5th defendant. It is too difficult to accept the said contention simply because of the reason that as discussed earlier the control, maintenance, continuance and stoppage of the electric energy or any part thereof, were not given under any contract and they were directed to do some work of transportation of posts, digging channels etc., and in that event it is upon the KSEB, the 1st defendant, to

take all precautionary measures and if there is any laches, default or negligence, they are liable to answer to all consequences flowing out of that negligence, default or deficiency, especially when it has resulted in the alleged incident causing injuries to the plaintiffs.

5. The learned counsel for the appellants

in AS.No.258/2002 brought to the notice of this Court the judgment rendered in a sessions appeal. It has no much relevance in the civil dispute because of the reason that what is dealt under the judgment is with respect to the negligence, if any, which would constitute a criminal a liability and not pertaining to the vicarious liability. In the result, AS.No.258/2002 is allowed and the AS.No.104/2003 will stand dismissed. The decree and judgment of the lower court will stand modified as exonerating defendant Nos. 2 to 4 from any personal liability and confirming the decree against the 1st defendant. No order as to cost. Sd/- P.SOMARAJAN
JUDGE SPV

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