

Kamamma vs Superintendent Engineer

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SooperKanoon Citation : sooperkanoon.com/1906826

Court : Karnataka

Decided On : Dec-02-2024

Judge : Ashok S.Kinagi

Appeal No. : RSA/1964/2021

Appellant : Kamamma

Respondent : Superintendent Engineer

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2024 BEFORE THE
HON'BLE MR JUSTICE ASHOK S.KINAGI REGULAR SECOND
APPEAL NO. 1964 OF 2021 BETWEEN:

1. KAMALAMMA W/O LATE KANTHARAJU AGED ABOUT 37 YEARS

2. GIRISH S/O LATE KANTHARAJU AGED ABOUT 17 YEARS

3. CHAITHRA D/O LATE KANTHARAJU AGED ABOUT 15 YEARS
APPELLANT Nos.2 & 3 ARE MINORS Digitally signed REP. BY

NATURAL GUARDIAN MOTHER by B VEENA 1ST APPELLANT
KUMARI

Location: HIGH

PRESENT ADDRESS: COURT OF

TUMAKURU TALUK AND DISTRICT PERMANENT ADDRESS: ALL ARE R/A MOOGANAHALI VILLAGE KASABA HOBLI, SIRA TALUK TUMAKURU DISTRICT-572137 APPELLANTS (BY SRI. GIRISH B BALADARE, ADVOCATE) -2- AND: SUPERINTENDENT ENGINEER KARYA AND PALANA CIRCLE BENGALURU POWER SUPPLY BOARD LTD., O AND M CIRCLE KOTHITHOPU ROAD TUMKUR-572101 RESPONDENT (BY SRI. H.V. DEVARAJU, ADVOCATE) THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 02.11.2019 PASSED IN IA NO.I RA.NO.163/2017 ON THE FILE OF THE VII ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKURU.

DISMISSING THE APPEAL AND FILED AGAINST THE JUDGMENT

AND DECREE DATED 03.08.2015 PASSED IN O.S.NO.138/2014 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, TUMAKURU. THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

This second appeal is filed by the appellants challenging the order on I.A No.1 dated 2.11.2019 passed in R.A.No.163/2017 by the VII Additional District and Sessions Judge, Tumakuru and the Judgment and Decree dated 3.8.2015 passed in O.S.No.138/2014 by the learned II Additional Senior Civil Judge and JMFC, Tumakuru. -3-

2. For convenience, parties are referred to as per their rankings before the Trial Court.

3. The appellants were the plaintiffs, and the respondent was the defendant.

4. The Plaintiffs filed a suit against the defendants for

damages. It is the case of the plaintiffs that, the plaintiff No.1 is the wife and plaintiffs 2 and 3 are the children of late Kantharaju. On 03.07.2009, at 02.00 p.m., the deceased Kantharaju and plaintiff no.1 were on coolie work at brick factory which belongs to Chandpasha, situated near Ullas Thopu, Sira Town. After having lunch, the deceased Kantharaju went for urination in Coconut garden near the factory shed, wherein unknowingly he stepped the broken electric wire lying on the land and died at the spot due to electrocution. The plaintiff No.1 lodged a complaint before the Sira Police Station and the criminal proceedings were initiated in UDR No.25/2009. The duty doctor of Sira Government hospital has conducted the postmortem and gave the report. It is contended that,

-4- Kantharaju died due to negligent act of the defendant. It is contended that the deceased Kantharaju was the only bread earner in the family of the plaintiffs and after the death of deceased, the plaintiffs are put to starvation. Hence, the plaintiffs demanded a compensation from the defendant, but the defendant refused to pay the compensation. Hence, a cause of action arose for the plaintiffs to file a suit for compensation by way of damages.

5. The defendant filed a written statement denying the

plaint averments and it is contended that, the incident occurred due to negligence of Kantharaju. It is contended that, there is no cause of action to file the suit. Hence, prays to dismiss the suit.

6. The Trial Court, based on the above pleadings, framed the following issues:

1. Whether the plaintiffs prove that they are wife and children of deceased Kantharaju, S/o Chikkamallanna?

2. Whether the plaintiffs prove that said Kantharaju died due to electrocution occurred -5- due to the act of negligence attributable to defendant Board?

3. Whether suit is maintainable?

4. Whether the plaintiffs are entitled for damages of Rs.7,00,000/- with interest?

5. What order or decree?

7. The plaintiffs, to prove their case, plaintiff No.1 was examined as P.W.1 and marked seven documents as Ex.P1 to Ex.P7. The official of the defendant was examined as

D.W.1 and no documents are marked. After recording evidence, the Trial Court, on the assessment of oral and documentary evidence, answered Issue Nos.1 to 3 in the affirmative, Issue No.4 partly in the affirmative and Issue No.5 as per the final order. The suit of the plaintiffs was partly decreed with cost. It is declared that, the plaintiffs are entitled for Rs.3,40,000/- with interest at the rate of 6% p.a., from the date of suit till payment. The defendant Board was directed to deposit amount within 30 days from the date of order, failing which it carries the interest at 9%

p.a. Further, the Court directed that in case of deposit, plaintiffs shall apportion the compensation amount at the ratio of 40:30:30. The share of the minor plaintiff Nos.2 -6-

and 3 shall be deposited in any nationalized bank for a period of 3 years with liberty to the guardian to draw the interest periodically. The share of plaintiff No.1 shall be released in her favour. The plaintiffs being dissatisfied with the compensation awarded by the trial Court preferred an appeal in R.A.No.163/2017 on the file of VII Additional District and Sessions Judge, Tumakuru and filed an application under Section 5 of the Limitation Act for condoning the delay of one year seven months and eleven days. The Appellate Court rejected I.A.1 for condonation of

delay and consequently dismissed the appeal vide order

dated 2.11.2019.

8. The plaintiffs aggrieved by the rejection of application I.A.1 and dismissal of appeal, filed this Regular Second Appeal for enhancement of compensation.

9. Heard the learned counsel for the plaintiffs and learned counsel for the defendant. -7-

10. Learned counsel for the plaintiffs submitted that the compensation awarded by the Courts below is on lower side. Hence, he prays to allow the appeal.

11. Per contra, learned counsel for the defendant supports the impugned order and the Judgment, and prays to dismiss the appeal.

12. This Court admitted the appeal to consider the following substantial question of law: "Whether the compensation granted by both the Courts below is just and proper?"

13. Perused the records and considered the submissions of the learned counsel for the parties.

14. It is not disputed that Kantharaju died due to

electrocution and plaintiff No.1 had lodged a criminal case and same was registered under UDR No.25/2009 and further, the plaintiffs produced records to show that deceased Kantharaju died due to electrocution. The Plaintiff No.1 was examined as P.W.1. She reiterated the -8- plaintiff averments in the examination-in-chief and to substantiate their case, the plaintiffs have produced the documents. Ex.P1 is the accidental report, Ex.P2 is the certified copy of the complaint which discloses that plaintiff No.1 had lodged a complaint before Sira Police Station. Ex.P3 is the inquest panchanama, Ex.P4 is the postmortem report, Ex.P5 is the inspection report (electricity), Ex.P6 is the genealogical tree and Ex.P7 is the final report. The Police has registered a criminal case in UDR No.25/2009 and the death was occurred due to negligence of the defendant. During the cross-examination, nothing has been elicited from the mouth of

this witness to disbelieve the examination-in-chief. In rebuttal, official of the defendant was examined as D.W.1, he reiterated the written statement averments in the examination-in-chief. From the perusal of Ex.P.1 to Ex.P.5, which discloses that the deceased Kantharaju died due to electrocution and the death was due to negligence on the part of the defendant. The Trial Court recorded the finding that

the plaintiffs have proved that, death was occurred

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due to negligence on the part of the defendant and held

that the plaintiffs were entitled for compensation and accordingly, decreed it. Accordingly, awarded compensation of Rs.3,40,000/- with interest at the rate of

6% p.a. The defendant did not challenge the judgment

and decree passed by the trial Court. The plaintiffs being dissatisfied with the compensation awarded by the Trial Court, filed appeal in R.A.No.163/2017 and filed an application for condoning the delay of (1) year, (7) months and (11) days. The Appellate Court rejected I.A.1 and consequently dismissed the appeal filed by the plaintiffs.

15. As the accident is of the year 2009, though the

plaintiffs have not produced any record to show the income of the deceased, the Trial Court has taken the notional income of Rs.3,000/- p.m. as per the chart prepared by the Karnataka State Legal Services Authority. The accident is of the year 2009. The notional income is taken at Rs.5,000/- p.m. In the post mortem report of the deceased, the age of the deceased is shown as 34 years.

- 10 - Thus, considering Ex.P4, this Court assess the age of the

deceased as 34 years. As per the law laid down by the Hon'ble Apex Court in the case of National Insurance Company Limited vs. Pranay Sethi and others, reported in (2017) 16 SCC 680, 40% future prospects has to be added to the notional income. Thus, it comes to Rs.5,000/- + 40% (Rs.2,000/-) = Rs.7,000/-. There are three plaintiffs, therefore, 1/3rd is to be deducted out of

Rs.7,000/-. Thus, it comes to Rs.4,667- (Rs.7,000/- minus Rs.2,333/-). The deceased was aged about 34 years. Thus, the multiplier applicable to his age group is '16'. Thus, it comes to Rs.4667/- x 16 x 12 = Rs.8,96,064/-. Plaintiffs are

entitled for the compensation of Rs.8,96,064/- under the heads of loss of dependency. In addition to it, the plaintiffs are entitled for a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Each plaintiff is entitled for Rs.40,000/- towards consortium (Rs.40,000/- x 3 = Rs.1,20,000/-). Thus, plaintiffs are entitled for compensation as under: - 11 - Sl.No. Particulars Amount in (Rs.)

1. Loss of dependency 8,96,064/-

2. Funeral expenses 15,000/-

3. Loss of estate 15,000/-

4. Loss of consortium 1,20,000/- Total: 10,46,064/- The plaintiffs are entitled for enhancement of compensation amount.

16. In view of the above discussion, I answer substantial question of law in negative. Accordingly, I proceed to pass the following order:

ORDER

i) The appeal is allowed with cost. ii) The Order, and the Judgment & Decree passed by the Courts below are modified. The plaintiffs are entitled for the total compensation of Rs.10,46,064/- as against Rs.3,40,000/- with interest. The Plaintiffs are entitled for enhanced compensation amount of Rs.7,06,064/- - 12 - along with interest at the rate of 6% p.a., from the date of filing the suit, till the date of realization. The plaintiffs are not entitled for interest for the delay period of (1) year,

(7) months and (11) days. The defendant is directed to deposit the enhanced compensation within a period of two months from the date of receipt of a copy of this order. iii) Draw decree accordingly. Sd/- (ASHOK S.KINAGI) JUDGE rs

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