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Caitano De Mello Vs. the Meridian Electrical Engineering Co.

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Court : Mumbai

Decided On : Mar-23-1926

Reported in : (1927)29BOMLR402

Judge : Kemp, J.

Appeal No. : O.C.J. Suit No. 2332 of 1923

Appellant : Caitano De Mello

Respondent : The Meridian Electrical Engineering Co.

Disposition : Suit dismissed

Judgement :

Kemp, J.

1. This is a suit by the plaintiff for compensation from the defendants or either of them under Act XIII of 1855 for the death of his son, who was a youth of eighteen, on July 6, 1922. The essentials for such an action are laid down in Section 1 of the Fatal Accidents Act which requires that the wrongful act, neglect or default which causes death must have been such, as, if death had not ensued, would have entitled the party injured to maintain an action and recover damages in respect thereof, and the Act gives a right to recover such compensation to the representatives of the deceased person.

2. Now, I have attempted to give my close attention to the facts of this case not only because the plaintiff obtained leave to sue as a pauper but also because I think he has some ground for complaint in the fact that his suit has been so long pending. The suit originally came before me in April 1925 and then issues were framed, and the evidence of a witness was ordered to be taken de bene esse. I then went on furlough and, for some reason or other, the suit did not appear on the daily board until after my return to India.

3. The first defendant company is owned by the witness Andrew M. D'Mello who carries on the business of electric installation, etc., and at the time of the incident in question the plaintiff's deceased son was in his employment. A question which I will have to decide is whether Anthony D'Mello, the plaintiff's son, was at the time of his employment with the first defendant company merely an apprentice who was learning the work of an electrician, or whether he was engaged as a wire-man capable of doing duties as such The second defendant company is an Electric Company holding a license dated 1905 granted by Government under powers conferred by Section 4(1) of the Indian Electricity Act of 1903 which is superseded by the present Act of 1910. As such they have established what are known as 'aerial lines' throughout the city of Bombay. An aerial line is defined by Section 2(a) of the Act and by the rules under the Act (especially Rule 62, Clause 4) certain precautions have to be taken by the Company for the purpose of protecting the public.

4. The deceased Anthony after leaving school was for six months with the New Scientific Electrical Co, which he joined in November 1921. There his pay was Rs. 20 rising to Rs. 30 per month. Thereafter, for one month and a half he worked at D' Cunha & Krishna at a salary, which his father in his evidence states, was Rs. 35 a month. Thereafter he was engaged by the first defendant company at a salary which I must assume, not only from the admission of the plaintiff in his petition but also from the other evidence in the case, was Rs. 60 per month. He worked there from June 8, 1922.

5. On or about July 5, 1922, the lights at the bungalow of Mr. Wadia at Walkeshwar went out and Mr. Wadia asked his friend Mr. Kapadia, who was the

manager of the Imperial Tobacco Company, to send a man to attend to them. On July 6, 1922, Mr. Kapadia sent his peon to the first defendant company. Mr. D'Souza, who in the absence of the proprietor of the first defendant company was looking after the business, sent up the deceased with his peon. The deceased on arriving at the bungalow was pointed out by Mr. Wadia's peon the broken jumper wire which connected the main phase line at the second defendants' installation with the consumer's service line. The deceased procured two ladders which he tied together and placed against the pole, mounted them, and in attempting apparently to remedy the jumper wire received an electric shock from which he died. It appears that on July 5, 1922, Mr. Wadia had written a letter to the second defendant company which letter was received by them on July 6, 1922, complaining that the main wiring connecting his electric installation with the company's depot broke the night before the letter. The second defendant company inferring from this letter that the matter was not for the Mains department sent it to the Meter department, where, after inquiry, it turned out that the matter was for the Mains department. The letter was then returned and repairs ultimately effected by that department.

6. Now, the plaintiff's claim is that the deceased was an apprentice. 'When he says that the deceased was an apprentice he does not mean that he was an apprentice under Act XIX of 1850 to the first defendant Company but what he means is that he was an inexperienced young man who was sent to the first defendant company to learn the business of an electrician, and his cause of action is this that he suggests that there was an implied warranty by the terms of the engagement that the first defendant should not employ the deceased on any such hazardous and dangerous occupation as would be likely to cause injury to any one of the deceased's experience. The cause of action, therefore, is really the alleged breach of duty arising out of the deceased's engagement as an apprentice as understood by the first defendant company.

7. Now, the principle on which compensation under Act XIII of 1855 will be awarded is the same as that under which it would be awarded under Lord Campbell's Act in England. It is compensation for the loss of the actual pecuniary benefit which the beneficiaries might reasonably have expected to enjoy, had the

man not been killed. This principle has been stated in the cases of Royal Trust Go. v. Canadian Pacific Railway Co. (1922) 38 T.L.R. 899 and Rollings v. Thompson [1922] 1 K.B. 329. Assuming, therefore, that I find the defendants or either of them liable, the matter of assessing any compensation is one which I will calculate on the basis of those principles.

8. Now, it is necessary to a clear conception of the case to understand, first, the installation of the second defendant company which was on the consumer's premises at Walkeshwar. Exhibit 3 is a model from which it will be seen that there are three live wires which are described as the main phase wires. The uppermost one is connected by what is called a jumper wire with the consumer's service line phase wire which in the model is coloured red and carries the current to the consumer's premises, What happened was that the jumper wire coloured green in the model and which the evidence shows is eighteen inches to two feet long came away at the end at which it was attached to the consumer's service wire.

9. I will take the case of the second defendant first because I think it can at once be disposed of. The question is whether under the circumstances of this case the second defendant company owed any duty to the deceased Now the second defendant company have a certain duty to the public and that duty is laid down by rules which require certain precautions to be taken in order to protect the public from the dangers of the aerial installation. It appears from the evidence that the electric company had taken all the statutory precautions which they were bound to take. The evidence shows that the poles which carry the lowest live wires are at a height of twenty feet from the ground. In addition there are certain cradles attached below the live wires and so placed that if a live wire breaks, it will be caught and prevented from hanging down to the ground. The jumper wire itself is only eighteen inches to two feet long and should it break there is no possibility of it coming within touch of any traffic on the ground. On this point there is the evidence of Mr. Price from the second defendant company and Mr. Higham, the Electrical Engineer to Government and, therefore, an impartial witness in the case. The jumper wire cannot be guaranteed against becoming detached from the live wires and the evidence shows the jumper wire had been properly fastened to the live wires. It, therefore, does not appear to me that the Electric Company

neglected to take any precaution which they were bound to take with regard to the public. They cannot guarantee to protect from the live wires any one who chooses to climb up the pole. That is not a risk which the Act requires them to guard against. In the circumstances, so far as the second defendant company is concerned, I fail to see that the case can be considered either as one in which the deceased could be regarded as a licensee as in the case of Fairman v. Perpetual Investment Building Society, [1923] A.C. 74 cited by counsel for the second defendant, or an 'invitee' which is the position of a workman who is brought on to dangerous premises to do work and is therefore a licensee with an interst or in much the same position as an invitee : Sutcliffe v. Clients Investment Co. (1924) 2 K.B. 746 and Cox v. Coulson. [1916] 2 K.B. 177 It appears to me, therefore, that there was no duty from the second defendant company to the deceased in this respect.

10. The evidence shows that nobody except the Electric Supply Company has a right to tamper with the wires on what is called the company's side of the meter. The consumer's service wire is part of the property of the second defendant company as well as the jumper wire, and the point at which the second defendant company's installation and the consumer's installation meet is a line at the meter. Under the circumstances, therefore, nobody except the second defendant company had any right to tamper with the installation in question, and the deceased was clearly a trespasser, and, according to the decision and the remarks in Lowery v. Walker [1911] A.C. 10 a person in such a position has no remedy against the second defendant company. It is not alleged that the second defendant company asked the first defendant company to repair the wires. The deceased must have known that there was risk attendant on his attempting to repair the wire. He trespassed on the second defendant's installation and knowing the risk he clearly brought himself within the principle 'volenti non fit injuria '; see also Thomas v. Quartermaine. (1887) 18 Q.B.D. 685 I see no importance in the fact that the second defendant company might have repaired this jumper wire earlier had they not sent the notice to the Meter department. The point is that the proper persons to repair were the second defendant company, and nobody else had the right to do so. The ease against the second defendant company must, therefore, fail.

11. With reference to the first defendant company the defence is that the deceased was not an apprentice, and, secondly, that he had no authority to attempt to repair anything on the company's side of the meter, and that as a matter of fact he had no right to do any work until he had furnished an estimate at the first defendant's office and that estimate had been accepted by the customer. The evidence shows clearly that the deceased, however inexperienced, cannot be held to be an apprentice. I might have thought, having regard to his previous training, that he really was so inexperienced that he might easily have filled the character of an apprentice but the petitioner in his petition admits that his son was receiving Rs. 2 a day, i. e., Rs. 60 per month, and the evidence for the first defendant is that he was paying the deceased Rs. 60 per month. We have also the evidence of Mr. Higham who says that in July 1922 wages of Rs. 60 per month were such wages as would be given to a wireman. Moreover, in the certificate which the deceased held he was described, rightly or wrongly, or possibly in order to enable him to secure a job, as a 'wireman'. Mr. Higham says that the wages of an apprentice are from annas eight to annas twelve a day and the petitioner, as I have pointed out, admits that his son used to receive Rs. 2 a day. Moreover, he received Rs. 35 a month at D'Cunha & Krishna, which is more than what Mr. Higham says is the usual remuneration for an apprentice. There is also the evidence of the first defendant who says that he had two other wiremen one of whom received the same wages as the deceased and the other being a more skilled man received annas eight a day more. Furthermore, the deceased seems to have done some ordinary wireman's work. All this evidence leads me to the conclusion that I must hold the deceased was taken as a wireman. The legal relation between the deceased and the first defendant company must be governed by the law as it stood in July 1922, that is, by the common law, and it is difficult to see how the first defendant as his employer can be hold liable.

12. Further, it appears from the evidence that the deceased undertook this job of repairing the jumper wire at his own risk. There is the evidence of the practice which existed in the first defendant company's office, which I have already referred to, namely, that an estimate is made when orders are given and that estimate has first to be accepted by the customer before the work is put in hand. It appears in this case that the deceased did not bring any estimate to the office which in the

ordinary course he should have done. Had he done so, it is possible that the first defendant might have warned him against touching the wire belonging to the second defendant company. Then, in the next place, the deceased was warned by the hamal at Mr. Wadia's bungalow that he was about to undertake a job which was dangerous as the hamal himself had sustained a shock in trying to correct the jumper wire before the deceased's arrival. It seems to me also only a matter of common knowledge that nobody except the Electric Supply Company has the right to tamper with the installation belonging to the second defendant company.

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