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Asa Ram and Another Vs. M.C.D. and Others

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Court : Delhi

Decided On : Sep-07-1994

Reported in : 1996ACJ20; 1994IVAD(Delhi)365; AIR1995Delhi164; 56(1994)DLT441

Judge : Ms. Usha Mehra, J.

Acts : Electricity Act, 1910 - Sections 39 and 33; Evidence Act, 1872 - Sections 3, 63 and 114; Fatal Accidents Act, 1855; Motor Vehicles Act, 1988

Appeal No. : Suit No. 1787 of 1988

Appellant : Asa Ram and Another

Respondent : M.C.D. and Others

Advocate for Def. : Jayant Nath, Adv.

Advocate for Pet/Ap. : Ms. Pinky Anand and; Ms. Geeta Luthra, Advs

Judgement :
ORDER

1. Sh. Asa Ram and another, by this suit, against the M.C.D. and others, have sought recovery of Rs. 4 lacs as damages on account of the death of their son Karan Singh, which according to them was caused due to rash and negligent act of defendants.

2. Brief facts giving rise to this suit are that in the beginning of July, 1985, a loose earth wire separated from the main electric wire crossing the house of the plaintiffs and protruded across the staircase of the house of the plaintiffs. The said wire was naked and un insulated. It was carrying high electric current. Plaintiffs had been lodging complaints to defendant No. 2, i.e., Delhi Electric Supply Undertaking (in short the DESU) regarding defective supply and of hanging loose wire on their house. About defective lines complaint was lodged as far back as in July, 1982, but no action was taken by the defendants except a casual visit by its junior staff. Pole No. 38 installed by the defendantwas the electric pole supplying electricity connection to the house of the plaintiffs. In July, 1983 when the earth wires separated and became naked and uninsulated carrying high voltage current, plaintiff No. 1 lodged a complaint in (he DESU office at Ujawa on 6th July, 1985 but no action was taken on the same. On the fateful day i.e. 4-8-85 Karan Singh deceased was on the ground floor talking to the plaintiff No. 1. Since the plaintiff No. 2 was on the first floor, thereforee, the deceased was going to meet plaintiff No. 2 on the first floor. While he was climbing the stairs he came in contact with the said loose naked wire and was thus electrocuted. This incident was witnessed by neighbours of the plaintiffs. They saw the deceased collapsing after coming in contact with un insulated wire hanging on the staircase of the plaintiffs. Post mortem on the deceased was conducted and it opined that his death was due to electrocution. After this accident, on 6th August, 1985 defendants surreptitiously removed the hanging wire. Death of Karan Singh was due to the negligence of DESU, its agents and employees. In fact because of this un insulated naked wire having current running through their house that deceased came in contact with the same. Notice under S. 478 of M.C.D. Act was served but defendants failed to compensate the plaintiffs, hence this suit.

3. Written statement was filed on behalf of defendants 1 and 2 only. It has been averred that there was no negligence on the part of the DESU or its employees or agents. The death was caused because there was no electricity in the premises of the plaintiffs, thereforee, the deceased tried to fiddle with the electric mains with the help of bamboo stick. Since it was a rainy season, the bamboo stick may not have been dry, fiddling with the electric mains caused electrocution. That was the probable cause of his death. There was neither any naked nor uninsulated wire

hanging on the staircase of the plaintiffs house. The cause of death of deceased Karan Singh was due to his illegal and unlawful fiddling with DESU mains.

4. Replication was filed in which it was specifically denied that the deceased Karan Singh fiddled with the DESU mains with a bamboo stick or that there was no negligence on the part of the defendants.

5. On the pleadings of the parties following issues were framed :--

1. Whether death of the accused was caused due to the rash and negligent act on the part of defendants 2 and 4? OPP

2. Whether DESU is liable to compensate the plaintiff for the death of the deceased?

3. Relief.

6. I have heard Ms. Pinki Anand for the plaintiffs and Mr. Jayant Math for the defendants and also perused the oral and documentary evidence placed on record and the submissions made by counsel at the Bar. After considering all the facts my decision on the above said issues are as under:

Issue No. 1

7. The burden of this issue was on the plaintiffs. To my mind they have successfully discharged the same. Plaintiff No. 1 appearing as PW 1 in no uncertain words stated that his son was talking to him while they were on the ground floor, thereafter he went to meet his mother on the first floor. While climbing the stairs he got electrocuted. He further testified that a loose wire was hanging on his staircase and current was running through it. It was naked and un insulated. He lodged a complaint in this regard with the DESU officials but no one paid attention nor the hanging wire was removed. Earlier also he had lodged complaint. One such complaint was lodged in 1982 when the DESU officials told him to take the wire and that they would come and fix up the same with the pole. Complaint lodged by him through his elder son is Ex.P-5, Even after 1982 he lodged complaints for rectification of wire.

8. From the cross-examination of PW-1, no material contradiction has been extracted. Rather he reiterated his case to the fullest extent by stating that on 6lh July, 1985, he along with his elder son Kanahaiya Lal, lodged the complaint with the DESU regarding hanging wire. He further stated that earlier then July, 1985 wire was not hanging. It was only in July, 1985 he found the loose wire hanging on his staircase, thereforee, lodged the report in the office of the DESU situated at Ujwa. To another question of the defendant, he stated that his family and he was taking precaution while climbing the stairs. But on the fateful day deceased came in contact with the hanging wire in spite of the precautions taken by him. A half hearted suggestion was given to plaintiffs that the deceased tried to fiddle with the wire, which suggestion he denied categorically. His testimony has been supported by the testimony of his brother Om Parkash PW 3. He besides being brother happens to be his neighbour in the village. He is the one who witnessed the incident and heard the cries of Karan Singh when deceased came in contact with the hanging wire. While climbing the staircase deceased's left hand touched the wire and he succumbed to the current passed through his body as is apparent from the post-mortem report Ex.PW 2/1. He also testified that complaint regarding hanging wire was lodged in the office of the DESU at Ujwa, but no action was taken. From the cross-examination of PW 3 no material contradiction could be brought about nor the defendants could prove that his testimony was not worthy of credence or reliance. Suggestion given to him regarding fiddling of the wire by deceased Karan Singh was denied by him. No further question was put to him to discredit his testimony. Not even a suggestion was given that he did not witness this accident. Being an eye-witness his testimony is worthy of credence. He also proved Ex.PW-1/9 which clearly show the loose wire hanging on the staircase of the plaintiff's house.

9. On the other hand defendant adduced the evidence of Sh. K. L. Kapoor. Appearing as DW-1 he stated that after the accident of 4th August, 1985 he reached the site in question and submitted his report. When subjected to cross-examination, he had to admit that all files of his office were paginated and each page was numbered. But only the document dated 4-8-85 placed on file was not paginated nor numbered. Non-pagenating, he tried to explain it away by saying that this document was urgent, thereforee, he took it directly to the residence of

the Superintending Engineer. Hence, could not be paginated on the file. He, however, could not offer any Explanationn as to why these two documents were not paginated even thereafter. The said document is Ex. DW-1/1. To a court question he admitted that correctness were always initialled, but the corrections made in this case in the document were not initialled by any official of the defendants. In order to clarify his position he stated that document dated 4-8-85 was a copy. The original of which was with the Superintending Engineer. According to him his report was based on personal observation and what was told to him at the site. Regarding the report of Electric Inspector, Delhi Administration, he stated that the inspector visited the site on 5-8-85. He, however, admitted that in his! report he has not mentioned plaintiff's house number. According to him this was only a preliminary report. The actual accident report did give house number. But the said original accident report was not produced. In fact perusal of the report shows that he never visited the site. Nor he mentioned the name of the neighbours from whom he gathered the alleged information. According to him photographs were taken at the site but those have not been produced nor filed the same on the court record. Mr. A. K. Gupta, DW-2, was working as Inspector in July, 1985 at Sub-Zone Ujwa District Najafgarh. He admitted that a complaint was received from the plaintiff in July, 1985, but could not produce the original complaint which according to him must have been destroyed being more than one year old. He admitted, when subjected to cross-examination, that complaints regarding naked wire were recorded in a separate register. He could not deny the suggestion that complaint regarding hanging of loose wire might have been entered in that register meant for such complaints. He did not produce that complaint register for the month of July-August 1985. So far as Mr. T. R. Sharma, DW-3 is concerned, when subjected to cross-examination, he could not say whether in the year 1985 electricity was supplied to the plaintiffs from Pole No. 38or 36, He even could not say whether the electricity in the year 1985 was supplied to the house of the plaintiff at all or not. He was absolutely ignorant about the supply position or regarding the incident in question.

10. From the oral and documentary evidence discussed above one thing clearly emerges and that is that Karan Singh died due to coming in contact with the electric current. The point for consideration is whether there was any naked wire

hanging on the staircase of plaintiff's house or whether deceased fiddled with the electric wire illegally and unauthorisedly. The defense set up by the defendants in their written statement was that the deceased fiddled with the electric main. But this defense was not put to plaintiff when he appeared as PW-1. Only a half-hearted suggestion was given about fiddling with the wire which of course was denied. PW-1 and PW-2 were not confronted with any material which could prove that deceased fiddled with electric mains in order to get illegal electricity. Even the fact that the transformer was defective and there was no electricity in the pole has not been established nor any suggestion in this regard was put to PW-1 and PW-3. Rather from the evidence it clearly emerges that the deceased came in contact with the loose wire hanging on his staircase which caused his death. Defendants have not been able to prove that there was no naked and un insulated wire hanging on the house of the plaintiff. On the contrary photograph Ex.PW-1/9 taken on the date of the accident show a loose wire separated from the main and hanging on the staircase of the house of the plaintiffs. According to plaintiffs' witnesses current was passing through this loose wire. Defendants have not been able to controvert the documentary and oral evidence led by plaintiff. PW-1/2 testimony that he lodged complaint on 6-7-85 regarding loose naked wire hanging and the current passing from the same crossing over his house, has remained unrebutted on the record. In fact defendant's own witness, DW-3 admitted that DESU maintained separate complaint register regarding the complaint of a naked hanging wire. But neither the said register was produced nor copy of theplaintiff's complaint was produced. For the non-production of these material documents an adverse inference can be drawn against the defendants. Had these material documents namely complaint register of hanging wire and the original complaint lodged by plaintiffs, been produced it would have gone against the defendants and would have falsified defendant's defense. Statement of PW-1 that he lodged complaint on 6th July, 1985 regarding a loose wire hanging on his staircase and current passing through it thus stand fully proved. Lodging of the report on 6th July, 1985 vide Entry No. 490687/490688 has not been denied by DW-2, rather Sh. A. K. Gupta admitted in no uncertain words that he did receive the complaint in the month of July, 1985 from the plaintiff. He also admitted that a separate complaint register was maintained in this regard. Hence, it does not lie in the

mouth of the defendant now to contend that a loose wire was not hanging or that Karan Singh died because he was fiddling with electrical main. Heavy reliance has been placed by the counsel for defendant on Ex. DW-1/1 i.e. submission of detail by the Executive Engineer D-9 regarding the incident. Reading of Ex. DW-1/1 shows that this report was based on the information fed by Sh. Guru Adhar break down Superintendent of the DESU, He on receiving the information of Karan Singh's death switched off the supply and went to the site to enquire. The said Guru Adhar has not been examined nor his report has been proved on record. Perusal of Ex.DW-1/1 shows that it is in fact Guru Adhar who gathered the information about the death of Karan Singh. Since, neither Guru Adhar has been examined nor his report in original has been produced, thereforee, no reliance can be placed on Ex. DW-1/1. It is not known as to from whom Sh. Guru Adhar enquired that Karan Singh with the help of a bamboo stick was trying to restore the electricity supply. In the absence of such details and more so Ex.DW-1/1 being based on hear say the same cannot be relied upon. Similarly Ex. DW-1/2 is an incident report given by Executive Engineer-D again based on the alleged information given by Guru Adhar, Break-down Superintendent. Hence itcannot be relied upon. Any information which is based on an information given by someone else has no value unless the informer who gathered the information is produced and opposite party given an opportunity to cross-examine him. Ex.D W-1/1 and DW-1/2 show that copy of the same was addressed to Electrical Inspector, Delhi Administration for information. It had all along been the case of the plaintiffs that Electrical Inspector, after inspection found wire hanging and current passing through it. The said report has not been placed on record. A very feeble defense was given for the non-production of the said . report. According to defendant, the Electrical Inspector being not an employee of the DESU, hence his report was irrelevant. Secondly the said Electrical Inspector inspected the site on 5th August, 1985 but submitted his report in November, 1985. In these circumstances counsel contended that such a report of the electrical inspector is not worth reliance. It was only a waste paper. The said Electrical Inspector being not an employee of DESU hence his report has no value. To my mind, this submission has no merits. The Electrical Inspector being an independent Government official functionary, his report carried authenticity and, to my mind, more valuable piece of evidence than

the oral testimony of defendants. His report would have thrown light on the actual position at site. In fact the whole controversy would have been solved. The contention of the defendants that the Electrical Inspector, Delhi Administration, has not the authority or that he was not competent to inspect and report is belied from defendants own conduct. If he had no authority then why the copy of exhibit DW-1/1 and DW-1/2 were sent to him. The Electrical Inspector being a person in authority, his report carries more authenticity. For the non-production of the said report it can be said that defendants are concealing true facts. To my mind, the non-production of that report is deliberate. Had that report been produced, it would have gone against the defendants. That is the reason it has not been produced. Contention of Mr. Jayant Nath that exhibit DW-2/1 was the only complaint received from plaintiffs inJuly 1985 and the reading of the same would show that plaintiff complained only about the non-supply of electricity and not of hanging wire. This argument has no force because as per D W-3 there were three kinds of complaint registers maintained by DESU namely (i) Meter Replacement Register, (ii) Service Line Replacement Register, and (iii) Complaint Register regarding naked wire known as service line register. The complaints regarding naked wire were registered in the Service Line Register. The said register was not produced nor Ex. DW-2/1 pertained to the said Line Register. Ex.DW-2/1 is only a copy of another Register. Hence the entries in Ex.DW-2/1 cannot be relied upon. The remarks made in Ex.DW-2/1 cannot be relied upon in the absence of original complaint lodged by plaintiff and the Service Line Register. The person who made these remarks has also not been produced to explain as to from where and on what basis he recorded the remarks in that register, copy of which is Ex.DW-2/1. Hence, plaintiffs claim and version cannot be nullified because of these remarks on Ex.DW-2/1. Even otherwise complaint regarding naked wire were registered in Service Line Register which Mr. Gupta, DW-2 did not produce. For this reason also DW-2/1 cannot be relied upon. In fact, the DESU/defendant has miserably failed to prove that the deceased was fiddling with the electric main and, thereforee, got electrocuted. From the evidence discussed above one can safely conclude that defendants have not been able to establish that deceased illegally fiddled with the electric main in order to have electricity supply available at his house. Nor have the DESU been able to prove that on 4th August, 1985 there was

no electricity in the house of the plaintiff or in the village. If this suggestion be accepted, then the defense of the defendant that deceased was fiddling with the electricity main falls to the ground. This is contradictory to the defense set up in the written statement. It shows defendants are not sure of their stand. Defendants have failed even remotely to establish that there was any negligence on the part of the deceased in coming into contact with the electric wire which caused his death.

11. It is not disputed that the electric wire was crossing from the house of the plaintiffs. This fact find support from Ex.PW-1/9 a photograph taken on the dale of the accident. It shows a small loose wire hanging on the staircase of the plaintiffs. It is the statutory duty of the -DESU to ensure that every overhead line is covered with insulating material. Any overhead line erected over any part of the house, street, or public place should be protected with a devise by which the line crossing that house should become harmless, in case it breaks. But that care has not been taken in the case in hand. The uncontroverted evidence of the plaintiff coupled with the document Ex.PW-1/9 taken on the first available opportunity and the complaint lodged by the plaintiff with the DESU would show that loose live wire was hanging on the house of the plaintiff and while climbing the stairs, deceased came in contact with the same. In fact the defendants have not been able to prove the case as set up by them. thereforee, it can safely be said that this is a case where principle of rest ipsa loquitur would apply. It can be said that deceased Karan Singh died because of the negligence and carelessness of the defendants. The burden was on the DESU to show that the deceased fiddled with the electric main illegally, but it failed to prove the same. On the other hand, plaintiffs by their testimony and from the testimony of the neighbour have been able to prove that DESU had been negligent and careless in maintaining the overhead lines crossing the house of the plaintiffs. Defendants have failed to prove that any necessary precaution against the danger of live wire hanging on the staircase of the plaintiffs was taken. DESU has not been able to prove that the accident in the instant case was due to the factors beyond their control. Deceased Karan Singh died having come in contact with the live wire hanging on the staircase of his house. This fact is also supported by the post-mortem report E.x.PW-2/1 in which cause of death has been stated to be electric current. His death has been proved on record by Ex. P-4. DD Report lodged to the police immediately upon the happening of the

accident is proved as Ex.P-2.

12. From the above discussion the only irresistible conclusion which can be drawn is that deceased Karan Singh died because of negligence and carelessness on the part of the defendants. Hence this issue is decided in favor of the plaintiffs and against the defendants.

Issue No. 2

13. In view of the decision given against Issue No. 1 the question for consideration is; to what amount the plaintiffs are entitled to, because of the tortuous conduct of the defendants for which the law holds the wrong does responsible for compensating the plaintiffs on account of the pecuniary losses suffered by them. In fact in such a case the responsibility is to be determined by applying as far as possible the general principle of restitution in interregnum. It is true that in many cases a perfect compensation is hardly possible but the court in doing justice between the parties has to take into consideration the general rules of awarding damages. Such damages would include pains and sufferings, pecuniary loss, loss of amenities of life on account of loss of the dear one. In this ease the son of the plaintiffs got electrocuted. Counsel for the plaintiffs drew my attention to the statement of the father, PW-1, who testified that his son was 19 years old, hale and hearty and used to earn about Rs. 1500/- to Rs. 2000/-. Deceased was doing the job of 'Beldar/Mistry' on daily wages. He produced on record the certificate Ex.PW-1/6 and PW-1/7, issued by the various organisations who engaged the services of the deceased. He further, slated that there was a longevity in the family of the plaintiffs. PW-1's grandfather died at the age of 99 years and his father died at the age of 95 years. He was 62 years old. His son Karan Singh used to pay his entire earnings to his mother. In fact both the plaintiffs were financially dependent on him. Plaintiff No. 1 being aged and ill does not do any work. They have thus suffered pecuniary loss of Rs. 2000/- per month. Had his son been alive his earning would have gone up to Rs. 4,000/- per month. He was not subjected to any cross-examination on this aspect of his statement. thereforee, this part of his testimony remainedunrebutted and uncontroverted on the record. This aspect of the statement of PW-1 has been corroborated by the testimony of PW-3, Shri Om

Prakash, brother of the plaintiff No. 1. He also testified that Karan Singh was working on daily wages and was earning about Rs. 2,000/- to Rs. 2,500/- per month. He was also not been subjected to any cross-examination on this part of his statement. thereforee, on record it has been proved that on an average the deceased was earning Rs. 2,000/- per month by working as daily wage 'Beldar/Mistry'. It has also not been disputed that there is a longevity jn the family of the plaintiffs and that the deceased was healthy young boy of 19 years. He belonged to Scheduled Caste family, which certificate is produced on record as Ex.PW-1/2. His school leaving certificate has been proved as Ex. PW-1/1. He had applied for job and was enrolled with the Directorate of Employment vide Ex.PW-1/8. Approximate income having been established coupled with the fact that both the plaintiffs were dependent on this unmarried son, it would not be difficult to conclude that there has been a pecuniary loss to them on account of the death of Karan Singh, besides the mental torture, pain and suffering undergone by them because of the death of their son for no fault of his. Relying on the decision of our own High Court in the case of Kumari Alka v. Union of India, : AIR1993 Delhi267 , where this Court held that damages have to include pecuniary loss, the pain and suffering and the loss of amenities of life beside general damages. In this case on account of the loss of life of their son plaintiffs are entitled to damages. In this case the defendants have behaved in a very callous and careless manner. It is in the testimony of PW-1 that alter the death of his son on 4th August, 1985 he was asked by the DESU officials that defendants would arrange for them a sum of Rs. 5,000/- from Shakti Sadan. But when he went to Shakti Sadan, even this petty amount was refused to be paid. He accordingly served them with legal notice Ex.P-1. Despite the legal notice, the defendants did not take any action to compensate for the suffering undergone by the plaintiffs because of the unfortunate incident of 4th August, 1985.

14. In the aforesaid facts and circumstances, we have to determine the quantum of compensation. As observed by Lord Wright in Davis v. Powell in (1942) AC 601 : 'It is a hard matter of pound, shilling and pence'. The mode of assessment of pecuniary loss suffered by the plaintiff is a baffling one. It is beset with certain difficulties and depends on many imponderables. It is to be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of

the life of the deceased. In Franklin v. The South-East Railway Co. (1858) 157 ER 448: 3 H and N 211, Pollock C.B. observed : 'We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough.' In Davis v. Powel (1942) AC 601, already referred to, Lord Russel of Killowen slated the law thus : 'The general rule which has always prevailed in regard to the assessment of damages, under the Fatal Accidents Act is well settled, viz., that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those acts the balance or loss and gain to a dependant by the death must be ascertained'. Lord Wright stated the law on the point thus at page 611 : 'The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately placed in diminution of the damages must be considered'. In Gobald Motor Service Ltd. v. Veluswami, : [1962]1SCR929 , Subba Rao, J. (as he then was) referred to the same principle restated with force and clarity by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd. (1951) AC 601, and observed thus : 'At first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by her accidents. thereforee the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the claimants of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source come to them by reason of the death, that is, the balance of loss and gain to a dependant, by the death must be ascertained.'

15. Supreme Court in the case of Prema v. M. P. State Road Transport Corporation, : [1993]1SCR321 , which was a case under the Motor Vehicles Act, held that it would be just and proper to allow 24 years multiplier. In that case deceased was earning Rs. 385/- per month and the Court granted Rs.86,000/- as the compensation beside awarding interest at the rate of 12%. In another case of Chandra-Sekhar v. H. Ranganadhan, C.S. No. 690/ 1985 decided on 25-5-93 the High Court of Madras awarded Rs. 7 lacs to the appellant who was a tennis player and who became cripple on account of accident.

16. Keeping the above principle in mind, I shall now proceed with the quantum of compensation payable to the plaintiffs herein.

17. The deceased was young boy of 19 years. He was having a good health and earning according to PW-1, between Rs. 1500 to Rs. 2,000/- per month at the time of his death. This statement has not been rebutted nor ever controverter nor subjected to any cross-examination. There is a longevity in the family of the deceased. His father, when made the statement was 62 years of age. His grand father died at the age of 95 years and great grand father died at the age of 99 years. thereforee, it can safely be said that deceased would have lived at least another 50 years if he had not been electrocuted.

18. Deceased was a 'Beldar/ Mistry' and it is a matter of common knowledge that minimum wages are revised and enhanced by the Delhi Administration from time to time. If Karan Singh had been alive he would have earned more than Rs. 1,500/- per month while working as Daily Wage 'Belder/Mistry'. In this regard certificate of the persons who engaged his 'services are Ex.PWs 1/6 and 1/7. In these circumstances multiplier of 30 years can be safely applied. Keeping in view his income at Rs. 1,500/- per month out of'which he must be spe'nding at least some amount on himself, I think the amount of compensation should be Rupees 3,60,000/-. It was contended by learned counsel for the plaintiffs that had he lived, he could have earned around Rs. 4,000/- per month. But the counsel forgets that after few years he would have been married and would be supporting his own family. The higher income would have been shared between his wife, children and parents. His expenses would have also increased. thereforee, the dependency of the plaintiffs, parents of the deceased, could not have been more than Rs. 1,000/- per month.

19. Hence taking into consideration the facts and circumstances of this case, I decree the suit in favor of the plaintiffs and against the defendants for a sum of Rs. 3,60,000/-with costs plus simple interest at the rate of 12% p.a. from the date of filing of the suit till realisation.

20. Order accordingly.

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