

Chellamma and ors. Vs. Kerala State Electricity Board and anr.

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Court : Kerala

Decided On : Jul-20-2009

Reported in : 2009(3)KLJ34

Judge : V. Ramkumar, J.

Acts : Kerala State Electricity Board Regulations - Regulation 23

Appeal No. : A.S. No. 2 of 1999

Appellant : Chellamma and ors.

Respondent : Kerala State Electricity Board and anr.

Advocate for Def. : C. Raghavan, Adv. and; C.K. Karunakaran, SC

Advocate for Pet/Ap. : T.M. Abdul Latheef, Adv.

Disposition : Appeal allowed

Judgement :

V. Ramkumar, J.

1. The plaintiffs in O.S. No. 321 of 1991 on the file of the Sub Court, Kottay am are the appellants in this appeal. The said suit was one for realisation of a sum of Rs. 75,000/- as damages.

2. The case of the plaintiffs can be summarised as follows:

The 1st plaintiff is the widow and plaintiffs 2 to 5 are the children of one Sivaraman who died on 17.01.1990 due to electric shock from the link-pipe on the 11 K.V transformer installed in the rubber estate of one Pazhayaparambil Hajiya situated by the side of Pattimattom - Poothakuzhy road. The said Sivaraman was going for work along the said road at about 7.30 a.m. on 17.01.1990. When he reached near the transformer, he saw one Abdul Salam crying for help as the latter was seen trapped near the link-pipe at the bottom of the transformer. Seeing Abdul Salam struggling, Sivaraman rushed to the spot and caught hold of him with a view to rescue him from the live link - pipe. Thereupon, both of them fell down on account of electric shock. Both were taken to the Mary Queens Hospital, Kanjirappally. But at 8.30 a.m., Sivaraman succumbed to the shock and injuries sustained by him. Abdul Salam, however, survived. The incident took place on account of the gross negligence of the employees of the Kerala State Electricity Board (K.S.E.B for short) in the Kanjirappally Electrical Major Section. A few days prior to the occurrence, sparking had been observed on the transformer by the local people. Even though the matter was reported to the 2nd defendant Assistant Executive Engineer, nothing was done. If necessary repairs to the transformer had been attended to, the above accident could have been averted. The transformer was installed in a rubber estate near the road where the public had easy access. Sivaraman was an able-bodied man aged 40 years. He was a daily wage earner getting Rs. 35 per day. He used to get work for 25 days in a month. The plaintiffs are entitled to a sum of Rs. 75,000/- by way of loss of dependency. The 1st plaintiff was aged only 39 years at the time of occurrence and she is entitled to a sum of Rs. 10,000/- as compensation by way of loss of consortium. Plaintiffs are entitled to Rs. 15,000/- for the loss of love and affection sustained by plaintiffs 2 to 5 and Rs. 5000/- for the pain and suffering sustained by the deceased who was fully conscious until his death. A sum of Rs. 5000/- is claimed by way of loss of prospects to the 2nd plaintiff who had attained marriageable age. Even though the total compensation due to the plaintiffs is Rs. 1,10,000/-, the claim is limited to Rs. 75,000/-. Hence the suit.

3. The suit was resisted by the defendants contending inter alia as follows:

The suit is not maintainable. The link - pipe is not a wire. The link-pipe is the operating handle of the 11 K.V transformer which had been installed. The link-pipe was for switching on or off the supply to the transformer. The link-pipe can be operated only by an authorised and competent employee of the K.S.E.B and that too by wearing rubber gloves on both hands. A danger board was also fixed on to the transformer giving a warning to the public. The transformer was mounted on a platform consisting of four-wooden pillars. The accident took place on account of the unauthorised operation of the switch by Abdul Salam in an unskilled manner. He thereupon got the electric shock and Sivaraman who had tried to rescue him, got electrocuted. The operation of the isolating switch on the transformer by Abdul Salam was unauthorised and illegal. The deceased himself had contributed to his tragic death. In the morning of 17.01.1990, Abdul Salam who was a worker in the Pattimattam Flour Mill, had come before the Pattimattam Transformer with a cutting plier, screw driver etc. After switching off the isolating link of the transformer unauthorisedly, Abdul Salam climbed upon the transformer platform and carried out certain work on the L.T. line without the knowledge or consent of the officials of the Board. At that time, heavy spark and flash were noticed on the top of the link switch. Then Abdul Salam caught hold of the handle of the link-pipe for the purpose of switching off the same. He once again sustained an electric shock. At that time, Sivaraman who came that way tried to rescue Abdul Salam and in that process, he also sustained a shock.

Nobody from the locality had reported about any sparking of the transformer on previous occasions. After coming near the transformer on 17.01.1990, Abdul Salam had switched off the link-pipe and had gone to the nearby house of PW2, Annamma John and asked for a knife. After securing the knife, Abdul Salam went back to the Transformer Station and carried out the repair work on the transformer. The accident occurred on account of the wilful and unauthorised act of Abdul Salam and the contributory negligence on the part of deceased Sivaraman in trying to save Abdul Salam. The defendants are not liable to pay compensation. The compensation claimed is excessive. The suit may be dismissed with costs.

4. On the side of the plaintiffs, three witnesses were examined as PWs 1 to 3 of whom PW1 is the 1st plaintiff namely the widow of the deceased Sivaraman and

PWs 2 and 3 were the workers in the neighbouring estate. Exts. A1 to A7 were got marked. On the side of the defendants, the Assistant Executive Engineer of Kanjirappally Electrical Major Section was examined as DW1 and Exts. B1 and B2 were marked.

5. The learned Subordinate Judge, after trial, as per judgment and decree dated 30.11.1994 dismissed the suit holding that the plaintiffs had failed to show that the accident occurred on account of the negligent act of the defendants. It is the said dismissal which is assailed in this appeal by the plaintiffs.

6. The only point which arises for consideration in this appeal is as to whether the judgment and decree passed by the court below are sustainable or not

7. I heard the learned Counsel appearing on either side.

8. The learned Standing Counsel for the K.S.E.B made the following submissions before me in support of the judgment and decree under appeal:

The evidence adduced by DW1, the Assistant Executive Engineer of Electrical Major Section, Kanjirappally, indicates that the transformer was mounted on a platform about 2 1/2 meters above the ground level and there was a danger sign installed on the transformer showing the picture of the skull. As per Regulation 23 of the Conditions of Supply of Electrical Energy, authorised staff of the KSEB alone can operate, handle or remove any apparatus belonging to the Board. Abdul Salam was not an employee of the Board. He was a worker in a nearby flour mill belonging to one Vineesh. Abdul Salam had absolutely no business to climb on the transformer upon the failure of power on the ill fated day. He got on to the transformer and after switching off the transformer by using the link-pipe, he was trying to replace the burnt portion of a wire on the transformer. Thereafter, he switched on the transformer using the link-pipe. Under the impression that the switch did not fall into 'on' position, Abdul Salam tried to switch off the transformer using link-pipe. It was at that time he got the electric shock. DW1 had deposed that all the above operations on the transformer could be undertaken only by the authorised staff of the KSEB and that too wearing gloves. Hence, if Abdul Salam who had no business at all to meddle with the transformer had sustained an

electric shock, he will have to thank his stars. Same should be the fate of Sivaraman also eventhough he might have come to the rescue of Abdul Salam. Even if it could be said that there was strict liability on the KSEB by applying the ratio in *Rylands v. Fletcher*, there are 7 exceptions to the said ratio and one such exception is that if the escape of electricity and the consequent electrocution was caused by the unforeseen act of a stranger, then the Board is not liable. The observations in that behalf made by the Apex Court in *Madhya Pradesh Electricity Board v. Shall Kumar* : AIR 2002 SC 551 have been relied on by a Division Bench of Gauhati High Court in *Meaha Java State Electricity Board v. Mrs. Edentinora Mawthoh and Ors.* : AIR 2008 Gauhati 174. Hence, the judgment and decree passed by the lower appellate court does not call for any interference.

9. I am afraid that I cannot agree with the above submissions. If really the aforesaid exception referred to by the learned Counsel was one which survived the decision of the Apex Court in *M.C. Mehta v. Union of India* : 1987 (1) SCC 395, I would have definitely accepted the contention of the KSEB. But then, in *Madhya Pradesh Electricity Board's* case after referring to the seven exceptions to the doctrine of strict liability founded on the Rule in *Rylands v. Fletcher*, this is what the Apex Court observed in paragraphs 12 and 13.

12. In *M.C. Mehta v. Union of India* : 1987 (1) SCC 395 this Court has gone even beyond the rule of strict liability by holding that 'where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on 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; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in *Rylands v. Fletcher*,'

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (*Rylands v. Fletcher*) being 'an act of stranger'. The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In *Northwestern Utilities Ltd. v. London Guarantee and Accident Company Ltd.* 1936 Appeal Cases 108, the Privy

Council repelled the contention of the defendant based on the aforecited exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party, The privy council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.

10. Thus, even the intervening act of a stranger will not break the chain of causation to exonerate the KSEB for the mishap. In M.P. Electricity Board's case, a stranger had tapped electricity from the distribution lines of the Electricity Board through pilferage and had clandestinely diverted electricity for his own use. The tapped line somehow got snapped and the live wire fell on the road. As there was rain, the road was wet and when the victim in that case, without knowing the disaster which awaited him, came on his bicycle he got electrocuted. The main defence of the Electricity Board in that case was that the mishap was due to the unforeseen illegal act of a stranger in unauthorisedly tapping the electricity and therefore the Board was not liable. It was repelling the above contention that the Apex Court made the above observations. In paragraphs 7 and 8 of the above decision the Supreme Court ruled as follows:

7. It is an admitted fact that the responsibility to supply' electric energy in the particular locality was statutorily conferred on the board, If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension, the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the board that somebody committed mischief by siphonina such energy to his private

property and that the electrocution was from such diverted line, it is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk measures - to prevent such mishaps.

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.

It is true that Abdul Salam who was only a worker in a nearby flour mill had no business to mount on the transformer consequent on the failure of power. It is also true that the said Abdul Salam had no authority to mend the defect noted on the transformer. But then, when he switched on the transformer using the link-pipe, he should not have sustained an electric shock. The very fact that the link-pipe became live shows that there was earth leakage to prevent which a circuit breaker ought to have been installed. If on touching an electrical apparatus a person gets an electric shock, it is technically known as earth leakage whereupon the system should trip so that precious lives can be saved. The purpose of an earth leakage circuit breaker is to prevent such tragedies. If such a precaution had been taken by the Board, the transformer would not have posed a potential threat to anyone who chanced to come into contact with the transformer. No doubt, it was for the

authorised personnel of the KSEB to carry out repairs, if any, on the transformer. But then, all that deceased Sivaraman did was only to save Abdul Salam who was found receiving an electric shock from the foot of the transformer. Sivaraman did not, and could not, know the reason for Abdul Salam sustaining the electric shock. While Abdul Salam was wearing slippers, Sivaraman who came that way and attempted to rescue Abdul Salam was bare-footed. So Sivaraman became a victim of the electrocution whereas Abdul Salam who was wearing slippers escaped.

11. The decision rendered by the Gauhati High Court in Meghalaya Electricity Board's case relied on by the learned Standing Counsel for the KSEB has not fully imbibed the decision of the Apex Court in Madhya Pradesh Electricity Board's case after which it is no more open to the KSEB to contend that the unforeseen act of a stranger would constitute a *novus actus interveniens* to break the chain causation so as to exonerate the KSEB. The principle laid down in Madhya Pradesh State Electricity Board's case had received further concurrence at the hands of the Apex Court in *Union of India v. Prabhakaran Vijaya Kumar* 2008 (2) KLT 700 (SC). Such being the position, the court below was not justified in holding that the KSEB could not have anticipated the act of Abdul Salam, the stranger, in meddling with the transformer and therefore the plaintiffs were not entitled to any amount by way of damages for the unfortunate death of Sivaraman who only attempted to save Abdul Salam. Now after the decision of the Apex Court in Madhya Pradesh Electricity Board's case it is doubtful whether the Board could avoid liability even towards Abdul Salam who really was on a frolic of his own.

12. The result of the foregoing discussion is that the judgment and decree passed by the trial court are not sustainable and are accordingly set aside. The suit will stand decreed for a sum of Rs. 75,000/- (Rupees seventy five thousand only) with interest at the rate of 6% per annum from the date of suit till realization.

This appeal is allowed as above. Having regard to the facts and circumstances of the case, the parties shall bear their respective costs in this appeal as well as in the suit.