

The Superintending Engineer. Vs. Salomi and ors.

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Court : Chennai

Decided On : Jul-23-2012

Judge : T.Raja, J.

Appeal No. : Second Appeal No.207 of 2006

Appellant : The Superintending Engineer

Respondent : Salomi and ors.

Advocate for Def. : Mr.P.S.Kothandaraman, Adv

Advocate for Pet/Ap. : Mr.V.Viswanathan, Adv.

Judgement :

Appeal against the judgment and decree, dated 19.12.2005 made in A.S. No.24 of 2005 on the file of the Principal District Judge, Vellore, modifying the judgment and decree dated 05.11.2004 passed by the Sub Court, Tiruppattur, in O.S. No.283 of 2003.

JUDGMENT

1. The first respondent herein is the wife of one Thiru.Susainathan (deceased), R2 to R5 are their children and R-6 is the father of the deceased. As plaintiffs, they filed a suit in O.S. No.283 of 2003 before the Sub Court, Tirupathur, seeking to pass a decree against the defendant/Tamil Nadu Electricity Board for payment of

Rs.5,00,000/- as compensation to them for the death of the family head- Susainathan, by pleading that late Susainathan was maintaining the family by earning about Rs.5,000/- per month from his betel leaves business; that on 20.09.2002 at about 5 AM., while proceeding in his bicycle via Sathampakkam-Nariyampattu Road, the deceased came into contact with a snapped live electric wire and due to electrocution, he died on the spot; that only because of the negligence of the defendant/Electricity Board and their poor maintenance of the electric posts and lines, the incident occurred; and that the family of the deceased consisting of the poor widow, helpless young children and age old father, who were all along maintained by the deceased with his monthly income, were left in lurch; therefore, the poor plaintiffs who have no source of survival after the death of the Head of the family which calamity resulted only because of the careless and negligent act of the defendant/Board have been constrained to file the suit for compensation as stated above.

2. The defendant/Electricity Board resisted the claim by filing written statement to the effect that the death of Susainathan was not due to any negligence on the part of the Board. According to them, there was a heavy wind on the previous night of the incident resulting in fall of coconut tree branches and as a result of the same, one of the overhead lines was cut off and since it had happened during dark night hours, the employees of the Board were not able to know the same. There was no carelessness or negligence on the part of the Board in maintaining the lines, rather, the occurrence did happen only due to the poor maintenance of the coconut-grove by its owner, who was not added as a necessary part. At any rate, the amount claimed being very exorbitant and there being no rhyme or reason to fasten the liability on the Board, the suit may be dismissed.

3. The trial court, after examining the case of both sides in the light of the oral and documentary evidence, by its verdict dated 05.11.2004, decreed the suit by awarding a compensation of Rs.4,29,590/- and directed the defendant/Board to pay the said amount together with interest at 9% from the date of the suit. Aggrieved by the said order, the Board preferred an Appeal in A.S. No.24 of 2005 before the Principal District Court, Vellore, and by Judgment and decree dated 19.12.2005, the lower appellate court slightly modified the decree of the trial court

by fixing the compensation as Rs.4,12,000/- payable by the Board to the respondents together with interest at 9% from the date of filing of the suit till the decree and thereafter 6% from the date of the decree till the date of realisation with proportionate costs. Questioning the said judgment, the Board has come up with the present Second Appeal.

4. At the time of admission, this Court framed the following substantial questions of law for consideration,

a) Whether the lower appellate court is justified in law adopting the multiplier of 13 as per the provisions contained in Schedule II of the Motor Vehicles act?

b) Whether the lower appellate court is justified in fixing the age of the deceased Susainathan is 45 years without reference to any material evidence?

c) Whether the courts below are right in extending the principles under the Motor Vehicles Act for awarding compensation to the facts of the present case?

5. While addressing on the questions of law, learned counsel for the appellant/Board would submit that both the courts below failed to take note of the vital fact that there was no negligence or carelessness on the part of the Board in maintaining the electric lines as strong wind in the previous night left the overhead electric lines cut off due to fall of coconut tree branches and therefore, the death of Susainathan was not a result of any lapse on the part of the Board but it was purely on account of vis major. Therefore, the conclusion reached by the courts below in holding the Board responsible and fastening the liability on it to pay the compensation is not legally sustainable. Added to that, the courts below committed a grave error in concluding that the age of the deceased was 45 when there was no proof for the same. Equally, another erroneous conclusion was reached without any material basis that the deceased was deriving a monthly income of Rs.3,5000/-. Thus, only by doing a clear guess work and wrongly applying the multiplier of 13, the trial court fixed the compensation in a very unfair manner and instead of reversing the legally untenable verdict of the trial court, the lower appellate court just modified the compensation sum marginally. According to him, the conclusions reached by the courts below was not based on concrete materials

and further, the case of the plaintiffs itself revolving around the pointless plea of negligence and carelessness is not acceptable as the death of the deceased was clearly an act of God, therefore, taking note of these crucial aspects, this Court may interfere by setting aside the verdict of the court below.

6. Per contra, learned counsel appearing for the respondents would argue that it is a clear case of negligence on the part of the Board in maintaining the Electric lines, however, conveniently the Board all along endeavours to hide their callousness by saying that it is an act of God. It is added that normally, there would be a specific device fitted in the Service Circles for instant stoppage of electricity whenever there erupts sudden natural calamities or fire accidents so as to avoid loss of life due to electrocution. If acted with a sense of responsibility, the Board could have simply shut down the power supply when heavy wind was blowing on the fateful night. Since the fault is only on the Board, to conceal their shortcoming, they searched for excuses and all along clung to 'vis major' and at one stage, even blamed the victim himself of negligence. That is why, both the courts below straight away brushed aside the claim of the Board and based on the evidence of the Board officials themselves, concluded that there was no proper maintenance of the electrical lines. Further, the age of the deceased was not fixed on any guess work as argued by the appellant's counsel, but only based on medical records under Ex.A2 and A3/Post Mortem Certificate and Death Certificate. In such circumstances, there is no point in commenting on the application of the multiplier of 13 as per Schedule 2 of the Motor Vehicles Act by the courts below. Ultimately, by stating that the family of the deceased after loss of the family head had no source of survival except the compensation, learned counsel submitted that when the lower appellate court appreciated all relevant aspects in right perspective and correctly arrived at the compensation, there is no scope for interference; hence, the appeal may be dismissed.

7. I have carefully considered the rival submissions advanced on either side and meticulously perused the judgments of the courts below and also the other materials available on record.

Admittedly, it is the case of both sides that the deceased died due to electrocution after coming into contact with a snapped live electric wire. As to whether the death was due to negligence of the victim himself or it was due to poor maintenance of the electric lines by the Board, it is seen that, to hold against the Board, the courts below relied on the evidence of none else than the official of the Board itself. DW-1/Officer of the Board while deposing by getting into the witness box not even produced a single document or record even to suggest that periodically, the wires were replaced to avoid feebleness and that at least check-ups at regular intervals were made to ensure that the devices and apparatus were in tact. The courts below pointed out that the Board not even endeavoured to examine the line-man or any other competent person to speak about proper maintenance of the lines. Further, the case of the Board that due to poor maintenance of the coconut grove by its owner, the incident occurred was rightly disbelieved by the courts below since, from the evidence, the grove was found to be situated at a distance of about 100 ft. away from the road. Added to that, the testimony of PW-2 considered in the light of the documentary evidence led the courts below to the one and only conclusion that the occurrence was not an outcome of vis major but because of major remiss on the part of the Board. Such conclusion, in my considered opinion, being absolutely correct, does not call for any interference by this Court. Further, the plaintiffs being rustic villagers not conversant and mindful of readily complying with the basic and essential formalities like recording births and deaths with the authorities, naturally, the medical evidence other than which there is no strong criterion to decide the age was relied on by the courts below produced before them in the form of Ex.A2 Post Mortem Certificate and Ex.A3 Death Certificate as per which, the age of the deceased was around 45 years. Consequently, the applicable multiplier for such age slab being 13 in terms of the Second Schedule of the Motor Vehicles Act, rightly the same was applied. Therefore, connected questions of law Nos.1 and 2 are answered against the appellant.

8. Inasmuch as the liability to pay compensation has rightly been fastened by the courts below on the Board and the judgment of the lower appellate court in slightly modifying the compensation amount which seems to be reasonable and the same not having been challenged by way of any cross appeal, in my view, there is no substance in the third question of law.

9. In the result, the Second Appeal is dismissed as devoid of any merit. No costs.

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