

(1998) 04 OHC CK 0014
In the Orissa High Court
Case No : First Appeal No. 181 of 1992

Ambika Padhan and Another

APPELLANT

Vs

Chairman, Orissa State Electricity Board and Others

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Citation : (1999) 1 ACC 279 : (2000) ACJ 297 : (1999) 1 CivCC 289 : (1998) 2 OLR 131

Hon'ble Judges : R.K. Dash, J

Bench : Single Bench

Advocate : H.S. Mishra and B.K. Mishra, for the Appellant; B.K. Nayak, for the Respondent

Final Decision : Allowed

Judgement

R.K. Dash, J.—Unsuccessful plaintiffs in Money Suit No. 40 of 1987 of the Court of the Subordinate Judge, Bolangir, are in appeal against the judgment and decree whereby their claim for compensation of Rs. 1,44,000/- has been dismissed.

2. Plaintiff No. 1 is the widow, plaintiff No. 2 is the son and plaintiff No. 3 is the mother of late Gopal Pradhan (hereinafter referred to as "the deceased"). They filed the suit in a form which is usually in claim cases under the Motor Vehicles Act, claiming compensation of Rs. 1,44,000/- for the death of the deceased due to electrocution. Their case, in short, was that on 5.9.1985 on account of heavy rain and cyclone the electric line snapped and was lying on the ground. The deceased while going to his land came in contact with the live wire as a result he died. The monthly income of the deceased was Rs. 450/- with which he was maintaining himself and the plaintiffs, his defendants. Since the Orissa State Electricity Board (for short, "OSEB") being the supplier of electric energy failed to maintain the line properly and because of its negligence the live-wire was snapped resulting in the death of the deceased, the plaintiffs filed the suit for compensation.

3. The defendants in paragraph 2 of their written statement admitting the death of the deceased due to electrocution pleaded inter alia, that due to heavy storm the low tension line was snapped and the deceased knowing the consequences came in contact with the said wire and met his death. They further pleaded that the deceased died due to his own negligence and that they were not responsible for his death. As to the income of the deceased their case was that he was earning Rs. 100/- and not Rs. 450/-per month.

4. On the above pleadings the learned Court below framed five issues of which the main issues were whether deceased, husband of plaintiff No. 1 and father of plaintiff No, 2 died on account of electric shock due to negligence of the defendants, and that whether plaintiffs are entitled to compensation as claimed.

5. The plaintiffs in order to prove their case examined four witnesses and brought in evidence the report of the S.D.O., OSEB (Ext. 3) and other documents. The defendants, on the other hand, examined three witnesses. Learned Court below on a scrutiny of the evidence passed a cryptic judgment holding that since the defendants were not negligent, they are not liable to pay damages as claimed by the plaintiffs. He, however, under issue No. 5 held that had the deceased been alive, he would have contributed a sum of Rs. 19,440/- for maintenance of his dependants and therefore, the plaintiffs are entitled to the aforesaid amount. Since the findings on main issues went against the plaintiffs, the learned Subordinate Judge dismissed the suit and it is against that judgment and decree, the present appeal is filed.

6. The learned counsel appearing for the plaintiffs contends that it being the admitted case of the defendants that the deceased died due to electrocution, and burden being on the defendants to prove that they were not negligent in maintaining the line or disconnecting the line after it was snapped and they having not discharged the said burden, the irresistible conclusion would be that because of their negligence the deceased died and in that view of the matter, the plaintiff's suit for damages should have been decreed. Controverting the aforesaid submission, learned counsel for defendants urged that the plaintiffs failed to prove that death of the deceased was as a result of snapping of the live wire and that there was any negligence on the part of the defendants resulting in the death of the deceased and moreover, even accepting the case of the plaintiffs that due to heavy rain and cyclonic weather there was snapping of the live wire, but it being the act of God the defendants could not be held responsible for the death of the deceased and therefore, they are not liable to pay any damage as claimed and the finding of the trial Court being based on appreciation of evidence, the judgment and decree should not be disturbed.

7. I have perused the pleadings of the parties and the evidence of the witnesses in great detail. The case of the plaintiffs in their pleadings is that due to heavy rain the live wire snapped and was lying on the ground and the deceased while going to his field came in contact with that live wire resulting in his death. This part of their case stands admitted by the defendants in paragraph 2 of their

written statement which reads as under :

"xxx To the information of these defendants the deceased Gopal had gone to catch fish in river Sungarh on 5.2.1985 at about 3 P.M. and touched electrical wire conductor of the Low Tension line. He died by touching the conductors of L.T. line which was snapped in flood water due to heavy storm and rains and knowing the consequences the deceased came in contact with the electrical wire conductor and met with his death xxx."

This being the admitted factual position it was no more necessary for the plaintiffs to bring on record the post mortem report and other relevant documents to prove that the deceased died due to electrocution. In that view of the matter, the next question that crops up for consideration is whether due to any negligence of the defendants the deceased met his death.

8. In an action for damage in tort if the plaintiff proves that the deceased was electrocuted from a live wire, then the presumption of fact would be that there was lack of power supply and in such type of cases the maxim "*Res ipsa loquitur*" applies and it aids the Court in deciding as to the stage at which the onus shifts from one side to the other. To attract the aforesaid principle two requirements are necessary, viz., that the thing causing the damage be under the control of the defendant or his servant, and that the accident must be such as would not in the ordinary course of things have happened without negligence. The apex Court in the case of *Syad Akbar Vs. State of Karnataka*, , has observed :

"The rule of *res ipsa loquitur* in reality belongs to the law of torts. Where negligence is in issue, the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim *res ipsa loquitur* may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred."

In view of the aforesaid legal position of law, there can be no second opinion that it was for the defendants to prove that the deceased's death was not due to their negligence.

9. Now let me find whether they have discharged the burden that lay on them. They examined three witnesses. Evidence of D.W. 1 is of no avail to them, since he was summoned to produce an application said to have been given to the Junior Engineer, Tusra. The next witness is D.W. 2. Equally his evidence does not

in any way help the defendants. He only denied to have received Ext. 1 while working as Junior Engineer, OSEB, Tusra. The last witness is D.W. 3. He was the S.D.O. at the relevant time and his version was that if the wire snapped due to cyclone, the department cannot be held responsible. This is the sum total of evidence of D.Ws. The learned trial Court on the question of negligence of the defendants mainly relied upon the evidence of D.W. 2 and took note of certain minor discrepancies in the evidence of P.Ws., and came to hold that negligence could not be attributed to the defendants. In paragraph 6 of the judgment he observed that the Department was not negligent in maintaining the electric installation. On a scrutiny of the evidence of the said witness with the help of the learned counsel for both parties. I find that no such statement was made by D.W. 2. On an over all scrutiny of the impugned judgment, I find that approach of the learned Subordinate Judge was casual and he neither applied his mind to the evidence available on record nor to the settled position of law, reference of which he made in the judgment. His non-application of mind, in my opinion, has resulted in grave injustice to the plaintiffs, the poor claimants, who have been compelled to run from pillar to post for more than twelve years to get justice. Had he taken little care and appreciated the evidence in the light of the settled position of law, the ultimate result of the suit would have been otherwise. Be that as it may, considering the admitted fact and on scrutiny of the evidence as discussed above, I am of the opinion that the death of the deceased was due to sheer negligence of the defendants and therefore, the plaintiffs being the dependants of the deceased are entitled to compensation.

10. In view of my finding as aforesaid, the next question is what would be the quantum of compensation that the plaintiffs are entitled to ? Life is precious. That cannot be equated with any amount of money. As the evidence goes, deceased was the only bread-earner in the family. He died leaving his young widow (plaintiff No. 1), minor son of one-and-half years (plaintiff No. 2) and mother (plaintiff No. 3). His monthly income according to the plaint averment was Rs. 450/- at the time when he died. This fact has, however, been denied and disputed by the defendants. Their positive assertion was that this monthly income was Rs. 100/-. P.W. 1 while being examined in the Court stated that the monthly income of her husband was Rs. 500 to 700/-. P.W. 2, father of the deceased, in cross-examination contradicted this statement, inasmuch as according to him, his son's daily income was Rs. 15/-. In other words, monthly income of the deceased was Rs. 450/-. The fact remains that the deceased was an able-bodied person and at the time of death he was aged 25 and was earning his livelihood as a daily labourer. Had he been alive, his daily income at present would have been Rs. 30/- i.e. the minimum wage of an unskilled labourer and his contribution for maintenance of the plaintiffs per month would have been Rs. 600/-. So, applying 18 multiplier, I would hold that the plaintiffs are entitled to compensation of Rs. 1,29,000/-.

11. In view of discussions made above and on consideration of the materials on record, I am not inclined to put my seal of approval to the judgment and decree

passed by the learned Court below. In the result, the appeal is allowed and the impugned judgment and decree are set aside. Consequently the suit is decreed in part. The plaintiffs are entitled to compensation of Rs. 1,29,000 (Rupees one lakh and twenty-nine thousand). The defendants are directed to pay the said amount within six months hence, failing which it will carry interest at the rate of six per cent per annum. Out of the decretal amount, a sum of Rs. 50,000/- shall be kept in fixed deposit in any nationalised bank in the name of plaintiff No. 2 Dolamani Padhan till he attains majority. No loan or advance shall be permitted from the said deposit. Out of the rest, a sum of Rs. 50,000/- shall be kept in fixed deposit in the names of plaintiffs No. 1 Ambika Padhan and plaintiff No. 3 Ghuni Padhan jointly for a period of five years. They are permitted to withdraw interest only for their sustenance. The remaining amount shall be paid to plaintiffs 1 and 3. There shall be no order as to costs.