

(2015) 01 GAU CK 0021
In the Gauhati High Court
Case No : R.S.A. No. 143 of 2010

Assam State Electricity Board and Others	APPELLANT
Vs	
Safirun Nessa	RESPONDENT

Date of Decision : 31-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Electricity Act, 2003 — Section 161

Citation : (2015) 01 GAU CK 0021

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : D. Bhattacharya and Standing Counsel, for the Appellant; Anisul Alam and R.A. Choudhury, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J.—This Second Appeal is directed against the judgment and decree dated 26.03.2007 passed by the learned District Judge, Hailakandi in Money Appeal No. 11/2006 whereby the amount of compensation of a sum of Rs. 1,00,000/- (Rupees One Lac) initially awarded by the trial Court was enhanced to Rs. 2,50,000/- (Rupees Two Lacs Fifty Thousand).

2. The Second Appeal was admitted by this Court to be heard on two substantial questions of law, which are quoted herein below:--

"1. Whether in the absence of any statutory report of the accident by the Senior Electrical Inspector as required under Section 161 of the Electricity Act, 2003 the appellant can be made liable for payment of compensation for the death of the plaintiff's husband due to electrocution?

2. Whether the learned first appellate court is justified in taking the monthly income of the deceased at Rs. 2000/- in the absence of any evidence in that regard and whether the notional income of Rs. 15,000/- is to be taken in the absence of any evidence relating to the monthly income of the deceased?"

3. The respondent/plaintiff's case, in brief, is that the husband of the plaintiff, Late Sahabuddin, was a businessman having no landed property of his own. When her husband was going to Kanchanpur on 21.06.1997 he died due to electrocution as the entire area surrounding a transformer set up by the defendants/appellants had been charged with electricity due to snapping of a high tension 25 mm cable which got dissolved and the exposed end had come in contact with the ground. As soon as the deceased Sahabuddin reached near the transformer he was electrocuted and died on the spot. The local people could not recover his body as the area remained charged with electricity for a long time. It was on expiry of about three hours that the body of the victim could be recovered with the help of police and the local people and taken to the hospital where he was declared brought dead. It is the case of the plaintiff/respondent that the transformer set up by the defendants/appellants was neither protected by any fencing nor was it maintained properly. In fact, the transformer was installed at a height of nearly 4/5 ft. from the ground by ignoring the safety standards. Had the defendants/appellants maintained the transformer properly by adhering to the safety norms then the accident could not have happened at all. The plaintiff/respondent, therefore, claimed that the accident occurred solely on account of negligence on the part of the defendants/appellants leading to the unfortunate death of her husband at a very young age. It was the pleaded case of the plaintiff that her husband was a businessman dealing in vegetables who used to earn an amount of Rs. 4000/- to Rs. 5000/- per month at the time of his death.

4. The plaintiff had lodged a claim for compensation demanding an amount of Rs. 5 Lacs before the defendants/authorities. However, no action having been taken on the basis of her such claim the plaintiff has been compelled to institute the suit claiming an amount of Rs. 5 Lacs as compensation on account of death of her husband due to the negligence of the defendants.

5. The defendant Nos. 1 to 3 filed written statement contesting the suit whereby besides taking the formal objections, they have denied that the accident occurred on account of negligence on their part. The defendant No. 4, namely, the State of Assam represented by the Collector had also filed written statement contesting the case of the plaintiff/respondent.

6. On the basis of the pleadings of the parties, the learned Civil Judge (Senior Division), Hailakandi framed as many as six issues which are as follows:--

"(1) Whether there is cause of action for the plaintiff's suit?

(2) Whether the suit is maintainable in the present form?

(3) Whether the suit is bad for non service of notice u/s 80 CPC?

(4) Whether the ASEB is responsible for the death of Sahab Uddin, the husband of the plaintiff as alleged?

(5) Whether the plaintiff is entitled to get compensation of Rs. 8 lakhs for the

death of her husband Late Sahab Uddin due to negligence act of defendants?

(6) To what other relief, if any, the plaintiff is entitled under law and equity?"

7. On examination of the pleadings and on the basis of the evidence available on record the learned trial Court recorded findings in respect of all the issues in favour of the plaintiff/respondent holding the defendant Nos. 1 to 3 guilty of negligence which had led to the death of the husband of the plaintiff/respondent. Accordingly, by the judgment and decree dated 30.03.2002 the learned trial Court awarded a lumpsum compensation of Rs. 1,00,000/- to the plaintiff/respondent to be recovered from the defendant Nos. 1 to 3/appellant Nos. 1 to 3 as damages and compensation on account of loss of life of the husband of the plaintiff.

8. Being aggrieved with the aforesaid judgment and decree passed by the trial Court the plaintiff/respondent preferred Money Appeal No. 11/2006 in the Court of District Judge, Hailakandi primarily being aggrieved by the award of compensation to the tune of Rs. 1,00,000/- as the same was not adequate according to the plaintiff. The appellant/defendant Nos. 1 to 3, however, did not prefer any appeal against the judgment and decree passed by the trial Court. Upon hearing the parties, the learned District Judge, Hailakandi disposed of the Money Appeal No. 11/2006 by the judgment and decree under appeal thereby enhancing the amount of compensation to Rs. 2,50,000/-. The judgment and decree passed by the trial Court, therefore, stood modified to the above extent. In computing the aforesaid amount of compensation the learned First Appellate Court notionally fixed the income of the deceased at Rs. 2000/- per month and computed the amount of compensation taking the age of the deceased at the time of his death to be 40 years so as to arrive at the figure of Rs. 2,50,000/- (Rupees Two Lacs Fifty Thousand).

9. Being aggrieved with such enhancement of the amount of compensation the appellants/defendants had approached this Court by filing the present Second Appeal.

10. I have heard Mr. D. Bhattacharya, learned counsel appearing for the appellants/defendants and Mr. Anisul Alam, learned counsel assisted by Mr. R.A. Choudhury, learned counsel appearing for the respondent/plaintiff.

11. At the very outset, it would be useful to point out herein that although the trial Court had decided all the issues in the suit against the appellants/defendants yet they did not prefer any appeal against the aforesaid findings of fact which has attained finality. The only apparent ground which is therefore available to the appellants/defendants in the present appeal is the validity and legality of the amount of compensation determined by the learned District Judge, Hailakandi. Such being the position, the first question of law formulated by this Court does not survive for consideration and the same is answered accordingly.

12. Mr. Bhattacharya, learned counsel for the appellants/defendants submits that

the learned District Judge had arbitrarily fixed the notional income of the deceased at Rs. 2000/- and thereafter arrived at the figure of Rs. 2,50,000/-. He, therefore, submits that there is no valid basis for arriving at the aforesaid figure and the same is liable to be set aside by this Court. Mr. Bhattacharya further submits in view of the decision of this court rendered in the case of State of Tripura and Others Vs. Jharna Rani Pal and Another, even assuming that the multiplier given in the second schedule of the Motor Vehicle Act, 1988 is applied in this case even in that case, since the plaintiff has failed to produce any certificate as proof of income of the deceased this is a case of no income falling under Clause 6 of the Second Schedule to the Motor Vehicles Act, 1988. Therefore, applying the multiplier as per clause 6, the compensation amount given by the lower appellate court is excessive. He submits that under the said clause the basis for computing the compensation ought to have been Rs. 15000/- per annum less one-third of the income applied to the relevant multiplier, which in this case would be 16, as the deceased person's age has been recorded as 40 years by the learned District Judge.

13. Per contra, Mr. Anisul Alam, learned counsel for the respondent/plaintiff, submits that the figure of Rs. 2000/- notionally fixed by the learned District Judge, Hailakandi is both just and reasonable and the same is not at all arbitrary or illegal. He submits that the plaintiff in her oral testimony has clearly deposed that her husband's earnings at the time of his death was between four and five thousand rupees per month and such oral testimony has not been challenged by the defendants at the time of her cross-examination. Since the facts of that nature can be proved by oral testimony, hence, it is not a case where there was no evidence available at all as regards the income of the deceased person at the time of his death. Mr. Alam further submits that it is not in dispute that the deceased person was a businessman dealing in vegetables who used to maintain a family of wife and four children. An income of Rs. 2000/- per month would indicate a daily income of around Rs. 65/- which is a very reasonable amount. A person earning an amount of Rs. 65/- per day cannot be expected to produce documentary evidence as proof of income. Mr. Alam by relying upon the judgment and decision of the Hon'ble Supreme Court reported in Kishan Gopal and Another Vs. Lala and Others, has submitted that in the aforesaid case even while computing the notional income for compensation to those who had no prior income the Hon'ble Supreme Court has held that having regard to the depreciation in the rupee value since the time of enactment of the Motor Vehicles Act, 1988, the amount of Rs. 15000/- mentioned in Clause 6 of the Second Schedule is too meager an amount and therefore calculated the compensation in the aforesaid case by taking the notional income as Rs. 30,000/-. Mr. Alam submits that even if the multiplier under the Motor Vehicles Act is applied in the facts of the present case taking Rs. 2000/- per month as the notional income even in that case the plaintiff/respondent will be entitled to a higher compensation amount. He has also pointed out that the learned District Judge has not awarded any amount under the conventional head though the

same was due and payable to the plaintiff/respondent under the facts and circumstances of the case.

14. I have considered the rival submissions put forward by the learned counsels for the contesting parties. There cannot be any doubt about the fact that the amount indicated in the Motor Vehicles Act, 1988 at the time when the Act was notified to be Rs. 15,000/- is a very meagre amount in the present day context having regard to the fact that the value of rupee has depreciated substantially. That apart, the amount of Rs. 2000/- notionally fixed by the learned District Judge in the facts and circumstances of the case does not appear to be arbitrary and unreasonable particularly having regard to the fact that there was unimpeached evidence available on record to indicate that the earnings of the deceased at the time of his death was between Rs. 4000/- to Rs. 5000/- per month. Although the plaintiff/respondent had categorically pleaded that the income of the deceased was Rs. 4000.00 to Rs. 5000.00 there has been no specific denial of the said assertion in the written statement. The defendants/appellants have not even disputed that the deceased husband of the plaintiff was in fact an earning member. In view of the above position of fact emerging from the record, the submissions made by Mr. D. Bhattacharya, learned counsel for the appellants/defendants, that the amount of compensation ought to have been calculated as per Clause 6 of the Second Schedule to the Motor Vehicles Act, 1988 taking the notional income at Rs. 15,000/- per annum does not have any force in the eye of law. There was material evidence available on record on the basis of which the learned District Hailakandi had notionally fixed the income of the deceased at Rs. 2,000/-. Therefore, taking the notional income as Rs. 2,000/- the compensation awarded by the first appellate court would not be less than what has been awarded even if the relevant multiplier under the M.V. Act is applied. Such being the position, this Court is of the view that the judgment and decree under appeal does not suffer from any infirmity warranting interference by this Court.

15. From the perusal of the judgment of the Court below it is seen that no amount under the conventional head has been awarded to the plaintiff/respondent. However, in the absence of any cross appeal in respect thereof this Court cannot consider such a claim.

16. In view of the reasons stated above, the Second Appeal is devoid of any merit and accordingly shall stand dismissed. It is directed that the amount of Rs. 1,50,000/- (Rupees One Lac Fifty Thousand) which is lying in deposit with the Registry in terms of the order dated 12.01.2011 in Misc. Case No. 233/2010 arising out of the present Second Appeal will now be permitted to be withdrawn by the plaintiff/respondent forthwith. The Registry will verify as to whether the said amount has earned any interest from the bank for the period during which the same was lying in deposit with the Registry and on such verification the benefit of such interest, if any, shall be passed on to the Plaintiff/Respondent. Having regard to the facts and circumstances of this case, it is further directed

that the balance portion of the amount payable under the decree shall be paid to the respondent/plaintiff within one month from the date of receipt of a certified copy of this order failing which the amount will carry interest at the rate of 9% per annum from the date of this judgment till realization.

The Second Appeal stands disposed of accordingly. However, having regard to the nature of issues involved there would be no order as to cost.

Stay order passed earlier shall stand vacated.

The LCR may be sent back.