

(2011) 10 CHH CK 0011
In the Chhattisgarh High Court
Case No : First Appeal No. 68 of 2009

Chairman, Chhattisgarh State Electricity Board and Another	APPELLANT
Vs	
Ghasiram and Others	RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Electricity Act, 2003 — Section 161, 21
Limitation Act, 1963 — Section 14

Citation : (2012) 1 CG.L.R.W. 54

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : B.P. Gupta, for the Appellant; M.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Nawal Kishore Agarwal, J.—This is defendants' appeal u/s 96 of the CPC (for short "the Code") challenging the judgment and decree dated 1-1-2009 passed by 3rd Additional District Judge (Fast Track Court), Raigarh in Civil Suit No. 6-B/2007 whereby a decree has been passed to the tune of Rs. 1,00,000/- along with interest @ 7.5 % per annum from the date of filing of suit till its actual payment. Brief facts of the case are that: On 15-1-2006 when Dolmati (since deceased) i.e. daughter of respondents No. 1 & 2 and sister of respondent No. 3 herein was going to collect cow dung from the field at village Dumar Muda, she came in contact with supporting iron wire of the electric pole in which electric current was flowing and due to electrocution she died on the spot itself.

2. Respondents i.e. parents and sister of deceased Dolmati have filed the suit claiming compensation against the appellants herein to the tune of Rs. 1,27,000/- for the death of deceased Dolmati.

3. The court below framed issues. In support of their case the respondents examined Ghasiram (PW-1), Ballabh Chauhan (PW-2) and Balram (PW-3) whereas defendants examined one Mukesh Kumar Sahu, Assistant Engineer as

D.W.-1.

4. The learned trial Court decreed plaintiffs' suit and awarded Rs. 1,00,000/- to the respondents along with interest @ 7.5 % per annum from the date of filing of suit till its actual payment against the appellants; finding inter alia; the appellants are responsible for the above accident. Hence this appeal.

5. Shri B.P. Gupta, learned counsel appearing for the appellants would submit, respondents failed to prove Dolmati died due to electrocution as alleged; no notice of accident was given to appellant as provided u/s 161 of the Electricity Act, 2003; application preferred is time barred and the judgment and decree deserves to be set aside.

6. On the other hand, M.K. Sinha, learned counsel appearing for the respondents would submit, the factum of accident has not been denied by the appellant rather admitted by Mukesh Kumar Sahu examined by the appellant as DW-1; suit was filed on 1-3-2006 was returned for its presentation to proper court, on 28-2-2007 for want of pecuniary jurisdiction as per distribution memo; the same was again filed on 3-3-2007 which was again returned on 13-3-2007 with permission to file the same after rectifying some formal mistakes, Plaintiffs after rectifying the mistakes again filed a suit on 20-3-2007. After exclusion of time for which the suit was pending before the court of District Judge, the suit is within time and the appeal preferred is misconceived and liable for dismissal.

7. I have heard counsel for the parties and perused the material available on record including impugned judgment and decree.

8. The submission of Mr. B.P. Gupta that respondents have failed to prove Dolmati died on account of electrocution is devoid of merit on the face of record. A careful reading of the pleadings of the parties would reveal the factum of accident and death of Dolmati due to electrocution was not in much dispute. The dispute raised by the appellants is that deceased Dolmati died on account of her own negligence. Merg intimation (Exs. P-1 & P-2), Final Investigation Report (Ex. P-3) and post mortem report (Ex. P-4) are also suggestive of the fact that Dolmati died as she came in contact with supporting iron wire of the electric pole in which electric current was flowing.

9. As per Mukesh Kumar Sahu (DW-1), the accident had occurred due to negligence of deceased herself, deceased was found dead near 11,000 voltage electric line, he is unaware whether or not the instruments installed near electric pole were of low quality, electric current was flowing through supporting iron wire of the electric pole.

10. When the matter is examined in the light of above evidence and material placed on record, there is no iota of doubt in the mind of this Court that Dolmati died as she came in contact with supporting iron wire of the electric pole in which electric current was flowing.

11. The responsibility to supply electric energy in the particular locality is

statutorily conferred on the Electricity 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 Board had the added duty to take all safety measures to prevent escape of such energy or to see electricity should not flow from the supporting wire of electric pole.

12. It is the lookout of the appellant/Board that electricity should not flow from the supporting iron wire of the electric pole and for that proper device must be used. The authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps. The Board is also liable under the strict liability rule. The basis of such liability is the foreseeable risk inherent in the very nature of such activity.

13. Therefore, it is crystal clear that accident had occurred due to gross negligence on the part of the appellants. So far as amount of compensation is concerned, the young girl of 17 years has died in the accident and the trial Court has awarded only Rs. 1,00,000/- for her death which cannot be said to be on higher side.

14. Merely because no intimation u/s 161 of the Electricity Act has been given to the appellants in a case where the happening of accident was known to the appellants is of no consequence and would not debar the claimants from claiming compensation and the above ground raised by Mr. B.P. Gupta is devoid of merit.

15. The core question therefore arises for determination of this Court is whether or not in the facts and circumstances of the case, the suit filed by the claimants/ plaintiffs is time barred.

16. In the instant case, the original suit was filed on 1-3-2006. The plaint was returned for its presentation to proper court on 28-2-2007 for want of pecuniary jurisdiction. The suit was then filed before the court having pecuniary jurisdiction on 3-3-2007. The trial Court returned plaint due to some mistakes which was trivial in nature with permission to file same after rectification of mistakes. Thereafter, the present suit was filed on 20-3-2007. It appears the suit was filed before the court of competent jurisdiction claiming Rs. 14,95,600/- as compensation. Valuation of the suit was reduced to the extent of Rs. 1,27,000/- as the plaintiffs was unable to pay requisite court fee. As per distribution memo after amendment in the valuation of the suit, the suit became triable by First Additional District Judge, Raigarh, therefore, the learned District Judge returned plaint on 20-8-2007 for its presentation to proper court.

17. Plaintiffs thereafter filed the same before First Additional District Judge, Raigarh having territorial jurisdiction. Learned First Additional District Judge having found some minor mistakes in the plaint, returned the same for its presentation after its rectification. Therefore, the present suit has been filed on 20-3-2007.

18. The Supreme Court in case of Ram Ujarey Vs. Union of India, ., has held: after return of plaint for its presentation before the appropriate court, the limitation would not run from the date of the order, but would run from the date on which the plaint was returned and observed in para 21 as under:

21. The period of limitation within which Claim Petitions can be filed before the Tribunal is indicated in Section 21 of the Act. The contingencies contemplated by Section 21 are not applicable to the present case. The suit, admittedly, was filed within time. It is another matter that it was filed in a court which had no jurisdiction and, therefore, the Tribunal, while allowing the appeal filed against the decree passed by the trial court, directed the plaint to be returned to the appellant for presentation before the appropriate bench of the Tribunal. Some delay had occurred in the re-filing of the plaint before the Tribunal and as pointed out by the Tribunal itself the delay was only of one and half month, although, at one place, the Tribunal observed that there was a delay of about eight months. The period of eight months has been calculated by the Tribunal from the date on which an order was passed at Allahabad for the return of the plaint. The limitation would not run from the date of the order, returned and made available to the appellant, if the appellant was not at fault. Two dates have been mentioned on which the plaint was returned: in the application for condonation of delay, the date mentioned is 20-10-1998. Since the O.A. was filed before the Tribunal on 12-12-1998, there was delay of either three and a half month or one and a half month, but not a delay of eight months as observed by the Tribunal. The Tribunal had itself observed in an earlier part of its judgment that there was a delay of one and half month only.

19. The High Court in case of Islam Shah Vs. Wali Mohammad Khan, and Brij Mohandas Gokulchand Vs. Narsinghdas Manoharilal and Others, has held: On return of plaint for presentation to proper court, the plaintiff is entitled to the exclusion of time u/s 14 of the Limitation Act till an endorsement of return is made on the plaint.

20. By applying the ratio of judgment of Supreme Court and High Court of Allahabad and Madhya Pradesh in the facts and circumstances of the case it is crystal clear that on return of plaint for presentation to proper court, the plaintiff is entitled to the exclusion of time u/s 14 of the Limitation Act till an endorsement of return is made on the plaint.

21. The accident had occurred on 15-1-2006. The original suit was filed on 1-3-2006, the plaint was returned for its presentation to the proper court on 28-2-2007 and if the period between 1-3-2006 and 28-2-2007 is excluded in computing the period of limitation i.e. one year in the instant case then certainly the suit filed on 20-3-2007 is well within time. Therefore, the ground of limitation raised by Mr. B.P. Gupta is also sans-substance.

22. For the reasons mentioned hereinabove, no ground for interference in the judgment and decree impugned is made out. The appeal being devoid of merit is

liable to be and is hereby dismissed. No order as to costs. Decree be drawn accordingly.