

(2003) 04 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

Chairman, Tamil Nadu Electricity Board

APPELLANT

Vs

PARVATI AMMAL

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Citation : 2004 3 CPJ 631

Hon'ble Judges : K.Sampath , S.R.Singharavelu J.

Final Decision : Appeal allowed

Judgement

1. THE defendants in O.S. No. 150 of 1988 on the file of the Additional Subordinate Judge, Cuddalore are the appellants in this appeal. THE respondents herein filed the suit as indigent persons for recovery of Rs. 1,00,000/- as compensation for the loss caused to them on account of the death of one Kuppuswamy-husband of the first respondent and father of the other respondents.

2. THEIR case was as follows : Kuppuswamy was engaged in the manufacture of pots and selling the same. He used to earn Rs. 250/- to Rs. 300/- per week. On 13.12.1986, at about 4.30 a.m., Kuppuswamy got electrocuted in front of his house at Manaveli on Vandipalayam Road. The electrocution was because of the sagging of the high tension electric wire in front of his house. When he came out of the house, he came into contact with the high tension wire which caused his instantaneous death. The sagging of the wire was purely due to the negligence of the Electricity Department. The Department had not taken necessary precaution to prevent the dangers of live wires getting sagged or snapped resulting in serious accidents. They should have made provision of automatic disconnection of supply of energy or shielding the same by insulating material. The said death was caused due to the negligence of the defendants/appellants. If the Department had been diligent and had been attending to its duties properly, the accident would not have occurred and the first respondent would not have lost her husband. At the time of his death, the deceased was 38 years old and he was hale and healthy. The first respondent had become a widow at her very early

age. She had to maintain her minor children and educate them. Kuppuswamy would have lived for more than 30 years and supported the family by earning large income. Because of his premature death, due to the utter negligence and failure on the part of the Department, the respondents have been put to great hardship and loss. The respondents estimated the damages at Rs. 1,00,000/- though they would be entitled to more. The second defendant filed a written statement resisting the suit inter alia contending as follows : The L.T. Lines along the road side of Manaveli Village being fed by Manaveli SS II for domestic and street lights. While so, in the morning on 13.12.1986, the copper wire No. 8 was found missing between poles with manufacturing No. 377, 367 RSJ pole and 385. The solid copper wire No. 8 conductor was found to have been cut by culprits during night hours, with the result, the conductor fell down between poles manufacturing Nos. 385 and 47 in the night hours on 12.12.1986. The deceased might have come into contact with the said conductor and got electrocuted due to contributory negligence. The accident was not due to callousness and indifference on the part of the Department. Soon after the receipt of the information from the Annamalai of Manaveli about the death of Kuppuswamy, the subordinate official of the Department rushed to the spot and appraised the Station House Officer, Cuddalore, O.T. Police Station in a complaint and the same was registered in Crime No. 632/1986. All the wires in the said street at Manaveli were only low tension lines and not high tension wires. It was wrong to say that electrocution was because of the sagging of the high tension electric wires on the low level in front of the house of the deceased. The alleged sagging was not due to the negligence of the Department. It was because of the cutting of the conductor at Pole 383 by some miscreant thief. The Department had provided necessary precautionary measures for avoiding accidents due to snapping of wire due to unforeseen circumstances and the maintenance was also proper. The claim, in any event, was highly exaggerated. Even before the defendants could evaluate the allegations made on behalf of the respondents, the respondents had rushed to the Court. The suit was liable to be dismissed.

On the above pleadings, the Trial Court framed the following issues and additional issues. (i) Whether the plaintiffs are entitled to the relief prayed for by them? (ii) Whether the claim is excessive? (iii) To what other reliefs the plaintiffs are entitled? Additional issues : (iv) Whether the accident was due to the negligence of the defendants? (v) Whether the first plaintiff is entitled to interest on the compensation? (vi) Whether the accident was due to contributory negligence of the deceased?

3. ON their side, the plaintiff examined the first plaintiff as P.W. 1 and one Muthulingam as P.W. 2 and marked Exs. A1 to A3. ON the side of the defendants, one Kalaimani was examined as D.W. 1 and Exs. B1 to B3 were marked. The learned Subordinate Judge on the basis of the oral and the documentary evidence held that the Department had been negligent, that it had not followed the standing instructions, that the accident was entirely due to the negligence of the Department and not on account of any contributory negligence on the part of

the deceased.

4. AS regards the quantum, the lower Court fixed the age of the deceased as 38 years and worked out his contribution at Rs. 5,000/- per year and using the multiplier of 25, arrived at Rs. 1,25,000/- and inasmuch as the plaintiffs had restricted their claim to Rs. 1,00,000/- awarded a sum of Rs. 1,00,000/- as compensation and interest at 6% per annum. The lower Court further directed the plaintiffs to pay the Court-fee due to the Government. 7(a). It is as against this, the present appeal has been filed. The learned Counsel for the appellant submitted that the Trial Court was in error in holding that the accident was due to negligence of the appellants, that it failed to note that there had been a theft of wire on the previous night, that on account of that a sagged wire had been hanging and had come into contact with the deceased, that it could not be characterized as negligence on the part of the appellants, and when once it is accepted that there was no negligence on the part of the appellants, then there is no question of payment of any compensation to the plaintiffs. Mr. R. Muralidharan, learned Counsel for the respondents submitted that the lower Court had on the materials found that the accident was entirely due to the negligence on the part of the defendants/appellants, that they had not taken the necessary precaution to prevent such accidents from taking place, that it had been clearly established that the accident was only because of the negligence on the part of the defendants and no exception could be taken to the decision of the Trial Court.

5. AS regards the quantum also, the learned Counsel submitted that even according to the Trial Court, the plaintiffs would be entitled to Rs. 1,25,000/- but since the plaintiffs had restricted their claim to a lakh of rupees, the Trial Court had awarded a lakh of rupees. The learned Counsel submitted that the rate of interest at 6 per cent is far too low. The learned Counsel further submitted that the poor plaintiffs had been asked to pay the Court-fee, but the department should have been directed to pay the Court-fee.

6. ON the above, the following points arise for consideration in the appeal. (i) Whether the accident was due to the negligence on the part of the Department, namely, Electricity Board? (ii) Whether there was any contributory negligence from the deceased Kuppuswamy? (iii) Whether the compensation fixed is excessive? (iv) Whether the plaintiffs would be entitled to more than 6 per cent by way of interest? (v) Whether the defendants should be directed to pay the Court-fee? The learned Subordinate Judge has adverted to the various documents produced and has, in particular, referred to the standing instructions which require the Department to take necessary precautions to prevent such accidents from taking place. It is not disputed that the deceased came into contact with a live wire and got electrocuted. It is also not disputed that the high tension wire had snapped in front of the house and in the early morning, before sun rise in the dark, he had come out of the house and came into contact with the live wire and lost his life. It is required under the rules that the lineman of

the Department should reside in the same area. But, it has been found that the lineman was living elsewhere. As per Rule 91, there should be a circuit breaker and there is nothing to show that any circuit breaker was kept in the place where it was required to be fixed. The rules also require that as soon as an accident occurs and somebody dies, it should be reported to the higher authority in Form No. 13 within 48 hours. But, in the instant case, though the witness claimed that Form No. 13 had been sent, it was not produced. Ex. B-2 which is stated to be an elaborate report does not contain the signature of any body. There is no seal of the office. The learned Judge has rightly held that it was not a genuine document. It is also seen that no steps had been taken to trace the real thief responsible for removing the copper wire. The Department has taken its own time to send the report though the rules require the report to be sent within 48 hours. It was also admitted by D.W. 1 that thieves used to steal by using insulated cutting pliers, that it was a regular occurrence and as per the standing instructions for the wiremen, the wiremen had to do periodical inspection and in the instant case, there was nothing to show that any periodical inspection was done by the wiremen concerned. It has been noticed by the lower Court that wire to a length of 150 metres had been cut and removed by the thief and no effective steps were taken to prevent such thefts. The learned Judge has given cogent and convincing reasons for coming to the conclusion that the Department had been negligent and had not taken necessary precautions to prevent such happenings.

It has been observed by Thomas Atkins Street in his presentation of the Foundations of Legal Liability Vol. I - Theory and Principles of Tort that : "...account must be taken of the duty to take care in its aspect of a positive obligation in the nature of an *assumpsit* (a common law action alleging damage from a breach of agreement). The violation of an imposed statutory duty is a sort of negligence *per se*."

7. IN *Charlesworth on Negligence* the following passage occurs : "When electricity is carried overhead by wires or cables great care must be taken in addition to any precautions required by statute, to see that it is not likely to become a source of danger. IN *Buckland v. Guildford Gas Light & Coke Co.* high voltage electric wires were taken across a field immediately over the top of a tree, part of which had been cut down to permit the passages of the wires. A girl of 13 climbed the tree when it was in full leaf, came into contact with the wires and was killed. The electricity undertakers, were held liable on the ground that they should have foreseen that someone might climb the tree and being unable to see the wires owing to the dense foliage, accidentally come in contact with them. A different result was arrived at in the somewhat similar case of *Mc Laughlin v. Antrim Electricity Supply Co.* There a boy aged 12 climbed a pylon, one leg of which was on public land and the other in a field used by children as a playground, came in contact with wire and was injured. He failed to recover on the ground that he was a trespasser on the pylon and climbed at his own risk. It would seem, however, that the real question is not whether the boy was a

trespasser but whether the electricity undertakers had fulfilled their duty to take care having regard to the situation and position of the wire and to the known circumstances generally."

The requirements of the tort of negligence has been summarized in Clerk & Lindsell on Torts, 15th Edition - 1982, Sweet and Maxwell: "The tort is committed when damage, which is not too remote, is caused by the breach of a duty of care owed by the defendant to the plaintiff. In traditional terminology the ingredients of liability are a duty of care, breach and damage; but for reasons that will become apparent, each of these terms is so ambiguous that unnecessary confusion results. Between them they yield an irreducible minimum of six requirements namely- (i) the existence in law of a duty of care situation, i.e., one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the type of person to which the plaintiff belongs by the type of person to which the defendant belongs is actionable(2) Careless behaviour by the defendant, i.e., it failed to measure up to the standard and scope set by law. (3) Foreseeability that such conduct would have inflicted damage on the plaintiff and of the kind of which he complains. (This is what is implied in the statement that the duty of care has to be "owed" to the plaintiff). (4) A casual connection between the defendant's carelessness and the damage. When these four requirements are satisfied, the defendant is liable in negligence. The and only then do the next two considerations arise, namely. (5) The extent of the damage attributable to the defendant. (6) The monetary estimate of that extent of damage. There is no magic in the order as set out, nor should it be supposed that Courts proceed from points (1) to (6) in sequence."

8. IN our case, the first four ingredients are satisfied. It has been established that the Department was at fault in not taking the necessary precautions to prevent theft. The lineman concerned was not a resident of the locality, though the rules require him to be a resident of the locality. The rules further require that the workmen should periodically conduct inspection and check that no theft has taken place. The circuit breaker had not been shown to have been fixed. Thus, there is a overwhelming material to show that the accident was entirely due to the negligence on the part of the Department. In *Nirmal Thirunavukkarasu v. Tamil Nadu Electricity Board*, 1984 (97) L.W. 24, it has been held that : "overhead electric wires carrying heavy load of electric energy are highly dangerous and if any human being or animal comes into contact with the same, the consequences are fatal. Hence, great care and caution are expected of the Electricity Board in laying, installing and maintaining overhead wires and generally these wires do not snap and fall down. If, therefore, such a thing happens, a prima facie inference can be drawn that there has been carelessness or negligence on the part of the Electricity Board in transmitting electric energy or in maintaining the transmission lines. The Electricity Board has also to take precaution against dangers of live wires snapping and falling down under unforeseen circumstances, by providing for automatic disconnection of supply of

electric energy."

Rule 91 of Indian Electricity Rules, 1956 provides that every overhead line which is not covered with insulating material and which is erected over any part of a street or other public place or any factory or mine or on any consumer's premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks. If the precaution under this rule is taken, the line, in case it breaks, would become dead and harmless. Needless to say that in the instant case, precautions contemplated had not been taken. The points arising for decision in this regard are answered against the appellants.

9. THE next question relates to damages- "THE amount of money as reparation for the results of tortious conduct for which the law holds the wrong-doer responsible is determined by applying as far as possible the general principles of restitution interregnum. In many cases a perfect compensation is hardly possible and would even be unjust. THE Court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be considered as reasonable amount of compensation. Courts should not also be in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependents, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss. THE pecuniary loss has to be concluded with reference to reasonable expectation of pecuniary benefit from the continuance of the life of the deceased."

Nirmal Thirunavukkarasu (supra):

10. THIS is a case where death has been caused. The deceased was 38 years old. He has left behind his widow and children. He was a potter and there is enough material to show that he earned Rs. 250/- to Rs. 300/- per week. The lower Court has fixed his annual contribution at Rs. 5,000/- and using the multiplier of 25, it has fixed the amount of Rs. 1,25,000/- and since the plaintiffs had restricted their claim to Rs. 1,00,000/- the amount of Rs. 1,00,000/- has been decreed. Though, in our view, the amount fixed is low, no cross-appeal has been filed. The lower Court ought to have also fixed the prospective loss of the deceased, pecuniary loss, loss of expectation of life, and loss of amenities of life. But, then it has not been done and as already noted no appeal or cross-appeal has been filed by the plaintiffs. The lower Court has assessed Rs. 1,25,000/- and fixed at Rs. 1,00,000/- as compensation as the plaintiffs had restricted their claim. The amount of compensation fixed by the lower Court is, therefore, confirmed.

The next question relates to payment of interest. In accident claim cases, under the Motor Vehicles Act, the present trend is to fix the interest at 9 per cent per

annum. In our view, the loss to the plaintiffs is irreparable. An additional 3 per cent interest on compensation amount if allowed would be beneficial to the plaintiffs. We, therefore, exercise our powers under Order 41 Rule 33, Civil Procedure Code, and hold that plaintiffs should be awarded 9 per cent of interest on the compensation amount of Rs. 1,00,000/-.

11. NOW, that the rate of interest is increased, the plaintiffs themselves can pay the Court-fee due to the Government on their claim. The judgment and the decree of the lower Court are modified, in that instead of 6 per cent interest, the plaintiffs would be entitled to 9 per cent interest on the amount of Rs. 1 lakh decreed. There will, however, be no order as to costs in the appeal. Appeal allowed.