

(2021) 03 OHC CK 0021
In the Orissa High Court
Case No : RSA No.123 Of 2019

Chief Executive Officer, Now Renamed As Authorized Officer,
NESCO Utility

APPELLANT

Vs

Smt. Kalimani Rout And Others

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, 100

Citation : (2021) 03 OHC CK 0021

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Advocate : R. Acharya, B.K. Nayak (1), A.Dash

Final Decision : Dismissed

Judgement

D.Dash,J

1. The Appellant, by filing this appeal, under section 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree passed by the learned Additional District Judge, Balasore in RFA No. 53 of 2012. By the said judgment and decree, the lower appellate court has set aside the judgment and decree passed by the learned Additional Civil Judge (Senior Division), Balasore in Money Suit No. 14 of 2007 whereby the Plaintiffs suit had been dismissed.

The lower appellate court has then answered the core issues in favour of the Plaintiffs in holding the Defendants to be negligent and responsible for the death of the husband of Plaintiff No. 1. Accordingly, the Defendants have been held liable to pay compensation of Rs.1,42,000/- with interest @ 6% from the date of institution of the suit till realization.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the trial court.

3. The case of the Plaintiffs is that the age of Bhanu Charan Rout at the time of incident was 50. He was a cultivator and wage earner. He was looking after the cultivation work for some time and during the rest of the time, he was engaging himself in doing the work as a labourer. Said Bhanu was approximately earning a sum of Rs.2000/- per month. On 11.09.2005, Bhanu Charan when was going to approach the road, he suddenly came in contact with the live 11KV electric wire which was lying being snapped from the poles. In the said incident, Bhanu Charan died on account of electrocution. Alleging improper maintenance of the live electric wire in supply of the electricity in the area, the Defendants being duty bound and in-charge of maintenance and supply of electricity in the area, the Plaintiffs have stated that the Defendants are liable to pay the compensation on account of said death of Bhanu Charan by electrocution in the above incident.

4. The Defendants in the written statement have averred that the electric wire being attended properly by them although and all possible care, safeguard and timely precaution having been taken when the fact remains that at no point of time any such grievance has been received as to their negligence in maintaining the overhead electric wire and supply of electricity, they are in no way responsible for the unfortunate incident. It is the case of the Defendants that on 10.09.2005 and 11.09.2005, there was heavy rain and wind followed by thunder, lightening etc. in the area and on 11.09.2005 when the deceased was going on the road by holding an umbrella over his head, the top portion of the iron handle of the umbrella came in contact with the live electric wire which was then in sagging condition and for that the deceased was electrocuted and met his death.

5. The trial court on the above rival pleadings has framed seven issues. On the most crucial issue as to the negligence of the Defendants i.e. issue no. 5, the finding having been rendered against the Plaintiffs, they have been non-suited.

The Plaintiffs being aggrieved by the judgment and decree passed by the trial court in dismissing their suit had carried the appeal under section 96 of the Code.

6. The lower appellate court taking up issue nos. 5 and 6 together for decision, on going through the evidence and upon their appreciation at its level, in the backdrop of the rival claim of the parties by applying the settled law on the subject has in clear term held the finding of the trial court to be erroneous. In that exercise, the lower appellate court has answered those findings in favour of the Plaintiffs holding the death of Bhanu Charan to have taken place on account of the negligence of the Defendants and as to their liability in paying the compensation to the Plaintiff. Accordingly, the other issue relating to the assessment of compensation being taken up, the lower appellate court has held the Defendants liable to pay the compensation of Rs. 1,42,000/- to the Plaintiffs.

7. Although in the memorandum of appeal, no such substantial question of law arising in the case for admission of the appeal is pointed out; in course of hearing, learned counsel for the Appellant (Defendant) submitted that the lower appellate court having rendered the finding on issue nos. 5 and 6 contrary to

what had been rendered by the trial court has committed grave error both on facts and law. He submitted that the said finding suffers from vice of perversity as because in arriving at the same, the lower appellate court has ignored certain material evidence on record and rather leaned more upon mere conjunctures surmises. He thus submitted that said findings are clearly the outcome of perverse appreciation of evidence and that is the substantial question of law standing to be answered in this appeal.

8. Keeping in view the submission as above, I have carefully gone through the judgments of the courts below.

9. In the case at hand, issue no.5 and 6 seem to be vital. That being so, the courts below have rightly taken those two together for decision. As it appears that the death of Bhanu Charan due to electrocution as to have taken place on 11.09.2005 stands admitted. It stands admitted to the extent that the electric wire with which the deceased came in contact was then in sagging condition hardly at a height 6 to 7 fts. from the ground and it is also admitted that Bhanu Charan having coming in contact with the said electric wire got electrocuted and met his death.

10. Principle of law has been settled that a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability".

"The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of *Rylands v. Fletcher*, 1868 Law Reports (3) HL 330, Justice Blackburn had observed thus:

"The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is *prima facie* answerable for all the damage which is the natural consequence of its escape."

There are seven exceptions formulated by means of case law to the said doctrine. One of the exceptions is that "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (Winfield on Tort, 15th Edn. Page 535).

The rule of strict liability has been approved and followed in many subsequent decisions in England and decisions of the apex Court are a legion to that effect. A Constitution Bench of the apex Court in *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480 and a Division Bench in *Gujarat State Road Transport Corpn. V. Ramanbhai Prabhatbhai*, AIR 1987 SC 1690 had followed with approval the principle in *Rylands* (supra). The same principle was reiterated in *Kaushnuma Begum v. New India Assurance Co. Ltd.*, AIR 2001 SC 485.

In *M.P. Electricity Board v. Shail Kumar and others*, AIR 2002 SC 551, one Jogendra Singh, a workman in a factory, was returning from his factory on the night of 23.8.1997 riding on a bicycle. There was rain and hence the road was partially inundated with water. The cyclist did not notice the live wire on the road and hence he rode the vehicle over the wire which twitched and snatched him and he was instantaneously electrocuted. He fell down and died within minutes. When the action was brought by his widow and minor son, a plea was taken by the Board that one Hari Gaikwad had taken a wire from the main supply line in order to siphon the energy for his own use and the said act of pilferage was done clandestinely without even the notice of the Board and that the line got unfastened from the hook and it fell on the road over which the cycle ridden by the deceased slid resulting in the instantaneous electrocution. In paragraph 7, the apex Court held as follows:

"It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the 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 managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy of his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps." (emphasis laid)

The principle of *res ipsa loquitur* is well known. It is explained in a very illustrative passage in Clerk & Lindsell on Torts, 16th Edn., pp. 568-569, which reads as follows:

"Doctrine of *res ipsa loquitur*. The onus of proof, which lies on a party alleging negligence is, as pointed out, that he should establish his case by a preponderance of probabilities. This he will normally have to do by proving that the other party acted carelessly. Such evidence is not always forthcoming. It is possible, however, in certain cases for him to rely on the mere fact that something happened as affording *prima facie* evidence of want of due care on the other's part: '*res ipsa loquitur* is a principle which helps him to do so'. In effect, therefore, reliance on it is a confession by the plaintiff that he has no affirmative evidence of negligence. The classic statement of the circumstances in which he is able to do so is by Erle, C.J.:

'There must be reasonable evidence of negligence.

But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.' It is no more than a rule of evidence and states no principle of law. "This convenient and succinct formula", said Morris, L.J., "possesses no magic qualities; nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin". It is only a convenient label to apply to a set of circumstances in which a plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. He merely proves a result, not any particular act or omission producing the result. The court hears only the plaintiff's side of the story, and if this makes it more probable than not that the occurrence was caused by the negligence of the defendant, the doctrine *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability. It is not necessary for *res ipsa loquitur* to be specifically pleaded."

As held above, a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps. The opposite parties cannot shirk their responsibility on trivial grounds. For the lackadaisical attitude exhibited by the opposite parties, a valuable life was lost.

Applying the aforesaid principles to the facts and circumstances as obtained from the evidence backed by the pleading, this Court does not find any such reason or justification to differ with the view taken by the lower appellate court. Rather, it is seen that the gross mistake committed by the trial court is not properly appreciating the evidence on record and applying the settled principles on the score by not recording the finding in favour of the Plaintiffs, has been rightly rectified.

11. Coming into quantum of compensation as has been assessed and held payable by the Defendants to the plaintiffs; the lower appellate court on analysis of evidence having held the age of the deceased to be 55 years then as also his monthly earning to be Rs. 2,000/- has selected the multiplier of 11 in computing the compensation. In this exercise, there surfaces no such glaring infirmity warranting interference in seisin of this appeal.

12. In the wake of aforesaid, the submission of the learned counsel for the Appellant (Defendant) that the case involves the substantial questions of law as stated in paragraph-7 cannot be countenanced with.

Accordingly, the appeal stands dismissed and in the facts and circumstances without cost.