

(1999) 05 GUJ CK 0019
In the Gujarat High Court
Case No : First Appeal No. 2840 of 1999

GEB

APPELLANT

Vs

Gangaram Jagabhai Solanki Decd thro" Heirs Nanuben J.
Solanki

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (1999) 05 GUJ CK 0019

Hon'ble Judges : J.N. Bhatt, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : A.D. Oza, for the Appellant; Bhargav D. Karia, for the Respondent

Judgement

J.N. Bhatt, J.—Admit.

2. Service of the notice is waived by learned advocate Shri Bhargav D. Karia, while appearing for the Caveators. Upon the joint request and on the facts and in the circumstances of the case, this appeal is taken up for final disposal today itself.

3. In this appeal under sec.96 of the Code of Civil Procedure, 1908, the appellants have challenged the judgment and decree dated 31.3.1999 recorded in Special Civil Suit No.28 of 1997 by the learned Civil Judge (Senior Division), Rajkot, whereby the mother of deceased, original plaintiff no.2, Nanuben Jagabhai Solanki, came to be awarded an amount of Rs.1,89,000/with interest at the rate of 12 per cent on account of death by electrocution of her son, Gangaram.

4. The respondents are the original plaintiffs, whereas the appellants are the original defendants. The original plaintiffs claimed amount of compensation and damages to the tune of Rs.4 lakhs under the provisions of Indian Fatal Accidents Act, 1855. It was the case of the plaintiffs that the deceased Gangaram J. Solanki, who was aged about 22 and was an earning member of the family while

doing labour work and collecting dust papers and plastic bags in Rajdev Street, on his having touched the dust bin near an electric poll, got electrocuted. It was the contention of the plaintiffs that the original defendants, Gujarat Electricity Board ("the Board" for brevity) was negligent in not maintaining the electric poll as required so as to secure safety of lives of the citizens from being electrocuted. Since a live wire was allowed hanging near the Substation, current was passing through the pillars which was also short circuited as a result of which the current started passing in the dust bin which took the toll of the life of Gangaram, who was earning Rs.50 to 60 per day at the relevant time as he was healthy and young labourer. The plaintiffs, therefore, claimed an amount of Rs.4 lakhs for the death of earning member of their family on account of electrocution which was attributable to the negligence of the appellant, Board.

5. The defendants appeared and resisted the suit, inter alia, contending that the dust bin belonged to the local Corporation and thus, it was the negligence on the part of the Corporation in not keeping the dust bin in a proper condition. However, it was denied that there was any short circuit in electric line and which has resulted into death of the deceased. It was also the case of the defendants that it was an act of God.

6. Upon the strength of the pleadings of the parties and the facts and circumstances, the trial court framed issues, exhibit 10 and after appreciation and analysis of the evidence led by the parties decreed the suit partly to the extent of Rs.1,89,000/- in favour of the original plaintiff no.2, Nanuben J. Solanki, mother of the deceased against the defendants, appellants herein for the tortious liability which resulted into death of the deceased Ganagaram by virtue of the impugned decree. That is how the appellants are before us.

7. After having heard the learned advocates for the parties, on the facts and in the circumstances of the case and evidence supplied to us at the stage of hearing, we are of the opinion that the unfortunate, premature and untimely demise of the deceased, Gangaram was attributable to the negligence of the original defendants, appellants before us in not taking required care and not following the required standards in maintaining the electricity supply and that too near electric substation of the Board. We have no hesitation in finding that there was wanton and gross negligence on the part of the Board, which culminated into cutting short of life of an young labourer. We do not find any evidence on record whereby prima facie proof of negligence could stand rebutted. Even the doctrine of res judicata successfully apply in the present case since the death arising out of electrocution is not in controversy.

8. The contention that the local authority, namely, the Corporation was negligent in not maintaining and keeping the dust bin near the electric substation wall even if it is assumed to be correct it would not in any case come to the rescue of joint tortfeasors as it is always open for the tortfeasors to select one or more to be sued against. Of course, our attention was drawn, in the course of submissions, that this contention is raised for the first time in this appeal.

9. Insofar as the actionable and recognisable act of negligence on the part of the appellants, original defendants is concerned there is no doubt in our mind and we are in complete agreement with the trial court and again we have also independently and threadbare considered the facts and circumstances from the analytical point of view the evidence, copies whereof placed before us. The ultimate conclusion of the trial court in holding the Board and its employees negligent for the resultant death of the deceased on account of electrocution on the unfateful day is justified. We, therefore, confirm the finding of the trial court on the issue of negligence.

10. Obviously, that would lead us to assess the quantification of damages. The trial court, in aggregate, has awarded an amount of Rs.1,89,000/-. After having considered the contentions raised by the learned advocate Shri Oza, and the facts and circumstances emerging from the evidence, we are satisfied that the amount of compensation is on higher and excessive side. No doubt, it is a settled proposition of law that the appellate court exercises its powers in a case like the one on hand for damages arising out of tortious liability and it would be at loath to interfere with the discretionary powers exercised by the trial court upon assessment of evidence led before it unless the amount awarded by way of compensation after proof of negligence in a given case is too inadequate or very excessive.

11. The important principle of law which was not brought to the notice of the learned trial court Judge is required to be taken into consideration while determining the quantum towards the settled proposition of law that the extent of damages in case of claim or suit by parents, widow and children would be different. The paramount consideration while fixing the amount of compensation in a case of tortious liability is to see that the dependency extent upon present or prospective income of the deceased, ordinarily, in the case of the claimant being mother of the deceased the amount of income assessed and estimated as a datum figure is required to be sliced down by 2/3rd. This principle is very well settled and would not detain us any longer. If this principle is applied to the facts and circumstances, the datum figure worked out even by the trial court, the amount of suit and the resultant decree is required to be reduced to the extent of Rs.1,50,000/- instead of Rs.1,89,000/-. We are, therefore, fully satisfied that the amount of Rs.1,50,000/- is justified on the facts and in the circumstances and the amount of Rs.39,000/decreed by the trial court is on very higher side upon not following the recognised doctrine of assessment of compensation arising out of the tort.

12. Before parting we are unable to resist the temptation of placing a parting caution or a suggestion nomenclature whatever they may be attributed to it as such is to again draw the attention with regard to the underlying design or purpose of award of compensation in a case of tort, more so when the Board is the Government of Gujarat undertaking, which has wedded to the social welfare doctrine. A poor and unfortunate young person belonging to the downtrodden

class while picking up and collecting waste from a dust bin came in contact with an iron dust bin which had live current on account of negligence of the Board. The mother of the deceased who was also doing such a petty labour work, is awarded amount of compensation for the untimely, premature and unfortunate demise of her son. Therefore, the amount of Rs.10,000/- paid by the Board after the unfortunate incident occurred as such ordinarily cannot be allowed to be deducted from the overall amount of compensation. Even then, the trial court has deducted and therefore, the submission that Rs.10,000/- awarded by way of ex gratia payment to the mother of the deceased should be considered while determining the compensation deserves to be straightway thrown away over. Accordingly it is also rejected.

13. Again we have found that there are no directions for disbursement and investment of the amount awarded. Needless to state that the duty of a court or tribunal as the case may be while assessing and awarding or decreeing the amount of compensation arising out of tort is obliged to consider the fundamental settled principles laid down for disbursement and investment so as to see that the amount of compensation is not being flittered away as in the societal set up in which we live in, most of the victims or their heirs or legal representatives are unable to exercise required fiscal discipline for the use of money in case of award in cash. Therefore, time and again it has been proclaimed and pronounced that in such a situation the Tribunal or court concerned should assume the role of a guardian and pass appropriate orders so that the purpose and desire desideratum with which the amount of compensation awarded is subserved. There is also a philosophy behind the doctrine and the role the Tribunal has to perform. The amount of compensation is awarded to see, as far as possible in terms of money, that the victims or their heirs or legal representatives are placed in the same financial position had there been no accident. In absence of any other statutory or constitutional provisions for regular payment of compensation in our country under the Motor Vehicles Act, 1988 or general law of tort, the amount is awarded lump sum at a time, unlike the amount of compensation stage wise as it is in practice in many western and European countries. By virtue of Administration of Justice Act, 1992 in the UK the provision is brought on the statute to award compensation stage wise whereas the same is put into practice by applying law in Scotland. Be that as it may, the cry and object raised in various decisions of the Honourable Supreme Court appears not to have reached the concerned courts. It appears that this proposition was not brought to the notice of the trial court, as a result of which we have to embark upon giving appropriate directions for the use of awarded and decreed money by way of compensation.

14. On the facts of the case following directions are issued to the trial court with regard to disbursement and investment.

(i) The amount of compensation determined by us together with interest at the rate of 12 per cent per annum from the month of March 1990 which is the date

of application for forma pauperis till the date of payment with proportionate cost be deposited in Fixed Deposit Receipt (FDR) of any nationalised bank, in the name of the plaintiffs, for a period of five years and it shall be renewed again for a further period after hearing the concerned plaintiffs by the trial court at an appropriate stage when the trial court is moved by way of filing Civil Application. Interest which accrues and becomes due and payable therefrom periodically be paid to the mother of the deceased, original plaintiff no.2.

(ii) The trial court shall take appropriate care to see that an endorsement is placed on FDR which shall be in the safe custody of the Nazir that no withdrawal or encumbrance is allowed without prior permission of the trial court.

(iii) The remaining 20 per cent amount is ordered to be paid by way of account payee cheque.

(iv) The appellants/ original defendants are directed to deposit the decretal amount as per the amended decree pursuant to our decision within the period of six weeks before the trial court.

It is hoped that the trial court will also take appropriate care to see that the aforesaid directions are carried out immediately upon the amount being deposited and the same does not lie idle before the court.

15. The office is also directed to send the Record & Proceedings immediately.

16. In the result the Appeal is partly allowed. The impugned judgment and decree accordingly stand modified in the special circumstances of the case. Rule is made absolute to the aforesaid extent. There shall not be any order as to costs.