

(1990) 07 MP CK 0024
In the Madhya Pradesh High Court
Case No : F.A. No. 74 of 1985

Gindiya Bai

APPELLANT

Vs

Madhya Pradesh Electricity Board and Others

RESPONDENT

Date of Decision : 03-07-1990

Acts Referred:

Constitution of India, 1950 — Article 12
Fatal Accidents Act, 1855 — Section 1A

Citation : (1991) 1 ACC 561 : (1991) ACJ 1100

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

B.M. Lal, J.—Bhagchand (deceased), aged 18 years, died due to electric current. His mother Gindiya Bai brought an action against the M.P. Electricity Board (hereinafter referred to as "the M.P.E.B.") and its officers claiming damages of Rs. 80,475/- under the Fatal Accidents Act.

2. The short facts leading to this appeal are that the deceased, who was aged about 18 years, was a resident of village Khapa, Tehsil Lakhnadon, District Seoni; on the day of occurrence, i.e., 30.6.1983, near village Bhimgarh the deceased was grazing cattle at a place popularly known as Zero Tank Chain; when the deceased was passing 10 feet away from the stay-wire of the transformer, which was installed by the respondents, he received a fatal current and died on the spot; the stay-wire was fixed for the purpose of giving support to the transformer poles. The matter was reported to the police station Chhapara.

3. The appellant after serving a notice vide Exh. P-I, dated 18.1.1984, filed a suit on the ground, inter alia, that the respondents had not properly maintained the transformer with due care and caution, on account of which the deceased received fatal accident and succumbed to it. The appellant was dependent on the

deceased and after his death her life became miserable. In support of her claim, it was submitted that the deceased used to earn Rs. 8/- per day as wages, out of which he spent Rs. 5/- on the family and Rs. 3/- on himself. Accordingly, she claimed vide paras 8, 9 and 10 of the plaint, total damages amounting to Rs. 80,475/-. She has also prayed for other relief deemed fit and proper in the circumstances of the case.

4. The respondents, however, while denying their liability to pay compensation, emerged with a plea that on account of nonpayment of electric charges by the consumers, i.e., the Irrigation Department of the State Government, which is operating the Upper Banganga Project and others, supply of electricity was disconnected by removing three grips of the main switch from the said transformer on 28.6.1983. It was further averred that the Assistant Engineer inspected the spot on 1.7.1983, i.e., one day after the alleged incident and submitted a report to the Superintending Engineer. According to the inspection report, it was found that three grips of the main switch were removed and uninsulated copper wire was fitted on the line called L.T. line which was going towards Banganga river. This uninsulated copper wire was wrapped in P.V.C. From this unauthorised arrangement, employees of the Upper Banganga Project had taken illegal connection upto their search tower. This naked wire was touching the stay-wire of the transformer pole thereby discharging electricity through the stay-wire and in this way the accident occurred.

5. The trial court found that the respondents were negligent, vide issue No. 2 and as such awarded compensation to the tune of Rs. 5,475/-, against which this appeal has been filed by the claimant, mother of the deceased and the respondents have also preferred a cross-objection.

6. Before discussing the point in issue involved in this appeal, at the very outset it may be stated that the burden is on the defendants to show that all necessary precautions were taken and observed by them.

7. In *Manohar Lal Sobha Ram Gupta v. M.P.E.B.* 1975 ACJ 494 (MP) and *Nirmala Thirunavukkarasu v. Tamil Nadu Electricity Board* 1984 ACJ 210 (Madras), it has been ruled that the burden of proof that there had been no negligence or carelessness is on the Electricity Board.

8. In the light of these decisions it is to be seen how far the respondents have discharged their burden of proving that all necessary and due precautions have been taken by them.

9. In this respect Annalal Belvanshi, DW 1, Divisional Engineer, has stated that the Irrigation Department had not paid the electricity bills and therefore on 28.6.1983 three grips from the transformer were removed and electric supply was closed. However, in para 14 of his statement he states that by illegal means direct connection was taken by the Irrigation Department. This he found after 3-4 days of the incident. He further admits in para 17 of his statement that stay-wire might receive current because of uninsulation.

10. Similarly, Sobhanlal, a lineman, DW 3, in para 7 of his statement admits that his residence is just 2 km. away from the spot where the alleged incident had taken place. However, immediately thereafter he states that he had inspected the transformer but he did not inspect the line after 9.6.1983 and only he went there when the alleged incident had taken place. He admits that energy was passing through the stay-wire with the result current was spread on wet land.

11. Considering the statements of Annalal Belvanshi, DW 1 and Sobhanlal, DW 3, it is abundantly clear that the respondents were very much negligent in taking proper precaution in maintaining the transformer and line and as such they failed to negative negligence, negligence which will be presumed on the principle of *res ipsa loquitur* and a *prima facie* inference can be drawn that there has been carelessness on the part of the respondents in properly maintaining the transformer. This inference is also supported by Rule 91 of the Indian Electricity Rules, 1956.

12. Every overhead line, where energy is passing, must be covered with insulating material, whereas in the instant case Annalal Belvanshi, DW 1, Divisional Engineer, has admitted that uninsulated wire was being used.

13. Here it will not be out of place to mention that Mr. Jaiswal, learned counsel appearing for the respondents, was asked to enlighten the court about the duties of the lineman and assistant lineman, but he failed to give a direct reply stating the duties of lineman and assistant lineman. However, it is common knowledge that the duty of a lineman is to take a close watch of the line around the clock, if possible, so that if any breakdown takes place he should, without any loss of time, report to his superior officers so that the same could be repaired immediately. But surprisingly enough Sobhanlal, DW 3, in para 7 states that though he resides just 2 km. away from the spot of the incident, but after 9.6.1983 he did not go to see the line and transformer. This is how the respondents have discharged the burden of proving that all necessary precautions were taken and observed by them. The statement of Sobhanlal, DW 3, abundantly clarifies the situation that the respondents were very much negligent in taking proper precautions in the maintenance of the line and transformer.

14. Therefore, in the opinion of this court the respondents have failed to discharge their burden that the transformer and electric line were being looked after properly and all necessary precautions were observed by them.

15. Now the next question would be about determination of quantum of damages. It is not disputed that at the time of the death the age of the deceased was about 18 years and the longevity of the family of deceased was 60 years. This was not challenged by the respondents before the trial court. Therefore, if the deceased survived he would have lived upto 60 years. The deceased was earning Rs. 8/- per day and was spending Rs. 5/- on his family and Rs. 3/- on himself. The calculation of damages claimed by the appellant vide paras 8, 9 and

10 of the plaint, though has been denied in the written statement, but no evidence has been led on behalf of the respondents. On the other hand, the plaintiff has proved the same. Therefore, the trial court, in the opinion of this court, has committed an error of law in reducing the amount of compensation claimed by the plaintiff. Since no evidence in rebuttal in respect of the damages claimed was led by the respondents, there is no reason to disbelieve the statement of the claimant Gindiya Bai and to reduce the amount claimed.

16. The provisions of Section 1A of the Fatal Accidents Act are not limited to cash payments which the deceased may be expected to make for the support of the claimants. It may include loss of service etc. In view thereof, the claimant is certainly entitled to compensation for the loss of service of the deceased which he was rendering and the claim as set up by the appellant for an amount of Rs. 80,475/- cannot be said to be unjust.

17. In Gobald Motor Service Ltd. v. K.M.K. Veluswami 1958 ACJ 179 (SC), Subba Rao, J. (as he then was) referred to the principles enunciated by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd. 1951 AC 601, in awarding compensation and held that the pecuniary loss sustained by the family members of the deceased has to be taken into consideration while awarding compensation. Similarly, in C.K. Subramania Iyer v. T. Kunhi Kuttan Nair 1970 ACJ 110 (SC), the Apex Court held that it is not a condition precedent to maintain action under the Fatal Accidents Act that the deceased should be actually earning money or contributing support to the plaintiff at or before the date of death provided the plaintiff had a reasonable expectation of pecuniary benefit. It was further held in this case that there can be no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at by precise mathematical calculation but the amount recoverable depends on the facts of each case.

18. In the light of the aforesaid reasoning, in assessing damages the indignity of the plaintiff in the instant case cannot be lost sight of particularly when the M.P.E.B. and its employees have been found negligent in inspecting the line for quite some time and as such the case falls within the ambit of not only negligence but culpable negligence on the part of the officers of the respondent concerned as discussed above.

19. Applying the principles laid down in C.K. Subramania Iyer's case 1970 ACJ 110 (SC), that there can be no exact uniform rate for measuring the value of human life and considering the cost of living in the present era when money has lost its value and even in England the theory of multiplier has been given a go-by, it is unfortunate that still we in India in a majority of cases follow the theory of multiplier in awarding damages. As such, time has come in our country to reject the outmoded rule and apply the common law of equity, justice and good conscience in awarding compensation or damages exemplary on the basis of social and pecuniary status of the victim and its family and also on the basis of the paying capacity of the compensator. Considering these aspects, recently the

Indian Railways Act has been amended and a minimum compensation in fatal accident cases has been fixed to the tune of Rs. 2,00,000/-.

20. Further, keeping in view these norms, in the recent decisions rendered by the Apex Court in Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, and MC Mehta v. Union of India 1987 ACJ 386 (SC), their Lordships have laid down the yardstick, while discussing the point in issue at length, for assessing and awarding compensation.

21. Applying the same principle in a recent landmark decision of this court in Union Carbide Corporation v. Union of India 1988 MPLJ 540, Seth, J., a distinguished Judge of this court, ruled in awarding an interim compensation that compensation be categorised in four classes, viz., Rs. 1,00,000/- in case of death, (ii) Rs. 1,00,000/- in case of total permanent disablement, (iii) Rs. 50,000/- in each case of permanent partial disablement and (iv) Rs. 25,000/- in each case of temporary partial disablement.

22. In a recent decision of the Apex Court rendered in Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, it has been held that State is liable for tortious acts committed by its agency. In this case a child was done to death on account of beating and assault by the police acting in violation and excess of powers vested in them. Exemplary compensation of Rs. 75,000/- was awarded to the mother of the child from the State for the death of the child.

23. This being so, the ratio laid down in the above cases in awarding damages may be taken as a yardstick in the present case. Unfortunately, the lady has claimed only a meagre amount and therefore beyond that no compensation can be awarded.

24. Before parting with the case it must be observed that the M.P.E.B. is responsible for the tortious acts of its employees right from the Superintending Engineer to the assistant lineman who were posted at the relevant time at Chhapara and failed to properly supervise resulting in the death of the appellant's son. The M.P.E.B. no doubt is liable for payment of compensation to the appellant, but if so advised the M.P.E.B. may initiate appropriate action against its employees who were negligent and on whose culpable negligence appellant's son lost his life, putting the M.P.E.B. in financial loss. Action may also be taken, if so advised, against Irrigation Department officials of Banganga Projects, Bhimgarh who had taken unauthorised connection. This may not only bring awareness amongst the officers in discharging their duties properly and efficiently but also prevent energy theft.

25. Further it is not out of place to state that nowadays institutions like the M.P.E.B., which are instrumentalities of the State falling within the meaning of Article 12 of the Constitution of India, are voluntarily coming forward to settle their disputes amicably in the Lok Adalats to the satisfaction of the sufferers by paying cash or through cheque immediately so as to mitigate the sufferings of

the victims. But in the instant case I fail to understand why the M.P.E.B. is fighting this case as a cantankerous even by filing cross-objection. Is it that they compromise in Lok Adalats just to make a show or propaganda alone or whether they really want that their litigation expenses are curtailed by entering into compromises? In much cases like the present one at least they must show some sincerity in coming forward and settling the dispute compassionately.

26. As a result of the discussion aforesaid, the cross-objection filed by the respondents has no force and is dismissed, as the respondents have entered the witness-box, but have not stated anything about the quantum of damages that the appellant is entitled to.

27. However, so far as the appeal is concerned, it succeeds and is allowed with costs. It is ordered that the appellant is entitled to get a total compensation of Rs. 80,475/- with interest at the rate of 6 per cent per annum from the date of presentation of the plaint, i.e., 28.8.1985 till realisation. Counsel's fee Rs. 1,000/-, if certified.