

(2016) 01 RAJ CK 0149

In the Rajasthan High Court

Case No : Civil First Appeal No. 323 of 2001.

Jaipur Vidhyut Vitran Nigam Ltd., Jaipur and Others

APPELLANT

Vs

Narayani Devi and Others

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2016) AAC 1845 : (2016) 2 DNJ 889 : (2016) 1 WLCRajUC 541

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Alok Garg with Lalima Purohit, Advocates, for the Appellant; Ashok Mehta, Senior Advocate with Siddharth Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J. - Defendant-appellants have preferred this first appeal aggrieved by judgment and decree dated 07.09.2001 passed by learned Additional District Judge No.1, Jaipur District, Jaipur, in Civil Suit No.14/1996, whereby the suit of the plaintiff-respondents has been decreed in part.

2. Briefly stated the facts of the case are that in the night of 10.02.1995 when one Malu Ram was plowing the field, he received electric shock through pole and died on the spot. His death was due to the negligence on the part of the officials of the then Rajasthan State Electricity Board, who made defective wiring on the electric pole as they did not install insulator. He was the sole bread earner of the family and the plaintiff-respondents were dependent upon him. Plaintiff-respondents filed suit seeking compensation for the death of said Shri Malu Ram. The suit was contested by the defendant-appellants stating that there was no negligence on the part of the RSEB. The wiring was rightly done and the insulator was there and that the cause of death of said Shri Malu Ram was not due to electric shock, but it was for some other reason. Learned trial court framed issues and recorded evidence of the parties. After hearing the arguments of both the parties, learned trial court, vide impugned judgment and decree dated

07.09.2001, partly decreed the suit for Rs.4,18,000/-. Feeling aggrieved thereby, the defendant-appellants have preferred this first appeal.

3. Learned counsel for defendant-appellants argued that the deceased did not exercise reasonable care while pulling the live wire, which, according to him, was hanging loose, whereas, as per the plea set up by defendants in their written statement, wiring on the pole was in correct position and insulators were intact. In the accident took place due to negligence on the part of he deceased. No written or oral information was given to the defendant-appellants. Learned counsel for defendant-appellants have argued that there was no eye witness produced on behalf of plaintiff-respondents to prove that death of Malu Ram was due to electrocution, yet learned trial court has relied on hearsay evidence. The witnesses admitted that when the incident of electrocution took place, no one was there at the place of incident. The postmortem report of the deceased was not exhibited. The plea of the plaintiff that the accident took place due to stray wire cannot therefore be accepted. PW-1 Naraini, in her statement, has stated that electricity passed through supporting wire of the pole, whereas the pole was of cement. The deceased was allegedly lying closed to the pole and cement is not a conductor of electricity, and therefore it cannot be believed that the electricity was passing through the pole. PW-2 Jagdish has stated that the deceased was affixed to the supporting wire. PW-4 Prahlad Rai has stated that the incident took place on 10.02.1995 and Malu Ram died due to electrocution which he received through the supporting wire of the pole, whereas DW-1 Motilal has admitted that the insulators were affixed at correct place. DW-2 Jagdish also in cross-examination has stated that insulators were fixed. No notice was given as per the provisions of the Electricity Act and thus mandatory provisions have not been followed. The defendant-appellants have wrongly been held guilty of negligence. The defence has not been considered in right perspective. The compensation awarded by learned trial court is towards higher side and it is based on wrong principles. The age and monthly income of the deceased have wrongly been taken into consideration. While awarding compensation, learned trial court did not keep in mind the provisions of the Fatal Accident Act. Before filing a suit, notice was required to be given by the plaintiff-respondents of the incident to the defendant-appellants, which was mandatory under law, but no notice was given and in absence of which the suit was not maintainable.

4. Learned counsel for the defendant-appellants, in support of his argument, has relied on judgment of the Supreme Court in *Kashi Nath v. Jaganath* ? (2003) 8 SCC 740, to argue that when the evidence is at variance with the pleadings, the evidence cannot be looked into or relied upon.

5. On the contrary, learned senior counsel for plaintiff-respondents opposed the appeal and supported the judgment and decree of learned trial court. It is argued that death of Malu Ram took place on account of negligence on the part of officials of the defendant-appellants and they did not make proper wiring on electric pole with insulator. Plaintiff-respondents are his dependents and a

minimum amount of compensation has been awarded by learned trial court. The deceased was the sole bread earner of the family. He was a poor tiller. He left the plaintiff-respondents survived behind him.

6. Shri Ashok Mehta, learned senior counsel, has submitted that as per the safety standards promulgated by Notification dated 05.01.2004 issued in exercise of powers conferred by Section 9(1)(I) of the Rajasthan Power Sector Reforms Act, 1999 with reference to Rule No.44A of the Indian Electricity Rules, 1956, if any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with any part of electric supply lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorised person of the RVPN/VVNLs/supplier, not below the rank of Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report in a form set out in Annexure-XIII of Indian Electricity Rules within 48 hours of the knowledge of the occurrence of the fatal accident and all other accidents. In the present case, no such report was sent either by the Junior Engineer or by the Assistant Engineer concerned. It was a serious lacunae on the part of the defendant-appellant. Learned senior counsel has relied on a Division Bench judgment of the High Court of Gujarat at Ahmedabad in *Rajkot Municipal Corporation v. Manjulaben Jayantilal Nakum and Others* ? 1992 ACJ 792, wherein it was held that normal rule is that it would be for the plaintiff to prove the negligence, in some peculiar cases, when the happening is such that it does not occur in ordinary course of things without negligence on the defendant's part, there is an exception to the normal rule and the plaintiff cannot be called upon to prove where the negligence had occurred. In this connection reliance is also placed on a judgment of the Supreme Court in *M.P. Electricity Board v. Shail Kumari and Others*- (2002) 2 SCC 162, in which case a live wire got snapped and fell on public road which was inundated with rainwater and a cyclist at night did not notice the wire and pass over the same and get instantaneously electrocuted. A claim for damages made by the defendants of the deceased was resisted by the appellant State Electricity Board on the ground that the electrocution was due to the clandestine pilferage committed by a stranger unauthorisedly siphoning the electric energy from the supply line. The High Court directed the Board to pay as compensation, Rs. 4.34 lakhs to the claimants. Before the Supreme Court, the appellant sought to rely on the exception to the rule of strict liability being "an act of stranger". In such circumstances, the Supreme Court held that even assuming that all safety measures had been adopted, 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". It differs from the liability which arises on

account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. One of the seven exceptions to the doctrine of strict liability is "act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply." But that exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant Board.

7. Having heard learned counsel for the parties and perused the material on record, this court is of the opinion that learned trial court has rightly partly decreed the suit filed by the plaintiff-respondents claiming compensation on account of death of said Shri Malu Ram. Learned trial court framed as many as four issues including the issue of relief. While awarding the compensation, learned trial court has taken into consideration the entire material on record. It has minutely scrutinised the oral and documentary evidence produced by both the parties on record. Death of Malu Ram took place due to electrocution while he was plowing the field in the night. A report was lodged in this regard and police investigated the matter. Postmortem was also conducted by the doctor of the Government hospital. The deceased was a poor tiller, who took the agriculture field on crop-sharing basis. He was plowing the field in the night as during day hours there is shortage of electricity. He was found dead in the field near the electric pole. The insulator was not there. Had the wiring been properly done with insulator, Malu Ram would not have died. All the witnesses produced on behalf of the plaintiffs have made similar statement in this regard. It is not expected of any person to remain present to see the incident, as during night hours only relevant person remains in the field and he plows the field. It was only when in the morning, daughter of Malu Ram went to the field and she came to know about his death due to electrocution. Even the team of electricity department visited the place of incidence, but the witnesses produced on behalf of the defendants-appellants have stated that the insulator was there and the wiring was properly done. From the evidence available on record, the learned trial court found that death of Malu Ram was occurred due to electrocution while he was plowing the field in the night. Even in the postmortem report, though it was not got exhibited, the cause of death of Malu Ram is stated to have been electrocution and the photographs (Exhibit-1 to Exhibit-6) also made the position clear in respect to the place of occurrence and supported the statements of the plaintiffs' witnesses. The current flowed in the supporting wire of the electric pole and Malu Ram came to its contact and got electrocution, due to which he died on the spot. It was the statutory duty of the defendant-appellants to maintain the electric pole and wires properly, but since the insulator was not there, the incident took place resulting in unfortunate death of a poor tiller, who was plowing the field on crop-sharing basis in the night and learned trial court has rightly partly decreed the suit awarding compensation in favour of the plaintiff-respondents.

8. In view of the above discussions, I do not find any merit in this appeal and the

same is accordingly dismissed with no order as to costs.