

(2017) 12 RAJ CK 0041
In the Rajasthan High Court
Case No : 176 of 2016

Jodhpur Vidhyut Vitran Nigam Ltd.

APPELLANT

Vs

Ram Kumar S/o Dhanpat

RESPONDENT

Date of Decision : 14-12-2017

Acts Referred:

Citation : (2017) 12 RAJ CK 0041

Hon'ble Judges : Ramchandra Singh Jhala

Bench : SINGLE BENCH

Advocate : Vikram Choudhary, Manjeet Godara

Final Decision : Allowed

Judgement

1. This second appeal has been filed by the appellant- Jodhpur Vidhyut Vitran Nigam Ltd. against the judgment and decree dated 31.5.2016 passed by learned Additional District Judge, Rajgarh, District Churu whereby the appeal filed by the respondent-plaintiff was allowed and suit was decreed and judgment and decree dated 12.2.2016 passed by the Civil Judge, Rajgarh was set aside and the appellant was directed to pay compensation of Rs.80,000/-.
2. Brief facts of the case are that the respondent-plaintiff filed a suit before the Civil Judge, Rajgarh wherein it is stated that his buffalo died due to stuck to electricity wire of appellant-Nigam for which a compensation of Rs.80,000/- was demanded.
3. The appellant-Nigam filed written statement wherein

the appellant-defendant stated that no liability accrues to Nigam for payment and the buffalo died due to negligence of respondent-plaintiff.

4. On the basis of the pleadings of the parties, the learned trial court framed as many as six issues and after evidence of both the parties, the Civil Judge, Rajgarh, District Churu dismissed the suit of the respondent-plaintiff on 12.2.2016.

5. Being aggrieved by the judgment and decree dated 12.2.2016, the respondent-plaintiff preferred first appeal before the Additional District Judge, Rajgarh, District Churu which was allowed and the suit filed by the respondent-plaintiff was decreed vide judgment and decree dated 31.5.2016.

6. Being aggrieved with the said judgment and decree passed by learned first appellate court dated 31.5.2016, the appellant-Nigam has preferred the present second appeal before this Court.

7. Heard learned counsel for the parties.

8. Learned counsel for the appellants has contended that the impugned judgment and decree passed by the learned first appellate court is contrary to law and facts and is liable to be quashed and set aside. The learned trial court appreciated the evidence correctly and decided the issues while holding that the negligence was not of appellant but was of respondent-plaintiff and the first appellate court has erred in allowing the suit and the first appeal, therefore, the judgment and decree passed by learned first appellate court is liable to be quashed and set aside and the judgment of the trial court may be upheld.

9. On the contrary, learned counsel for the respondent-plaintiff has supported the impugned judgment passed by learned first appellant court and submitted that the learned first appellate

court has rightly allowed the first appeal and decreed the suit and no error has been committed by the learned first appellate court in passing the impugned judgment dated 31.5.2016 and prayed that the instant second appeal may kindly be dismissed.

10. The substantial question of law which arises in the present appeal is as under:-

Whether the judgment passed by the appellate court is based on misreading of oral or documentary evidence or the same has been passed by overlooking the material available on record and is contrary to the provisions of law?

11. Upon perusal of record, it is admitted fact that buffalo contacted with an electric stay wire in which electricity was running as a result of which the buffalo died. Upon perusal of evidence, it is clear that the respondent-plaintiff succeeded to prove that appellant-defendant never kept maintenance of transformer, stay wire and pole etc. Despite information, the appellant-defendants were always negligent to maintain the lying wire and transformer. The appellant-defendants failed to produce any evidence which shows that they were aware and maintained the pole, lying wire, stay wire and transformer etc. The defendant-witness DW-2 Mahaveer who is Technical Helper of appellant-Vidhyut Vitran Nigam in his cross-examination had categorically admitted that "VERNACULAR MATTER OMITTED"

12. In these circumstances, it is proved that buffalo died due to electric shock from a stay wire and appellant-defendants did not maintain the transformer and stay wire etc., therefore, learned first appellate court has not committed any error in holding that the incident took place due to negligency of appellant-defendant-Vidhyut Vitran Nigam.

13. So far as the compensation of Rs.80,000/- awarded by learned first appellate court is concerned, in my considered opinion, there is no specific evidence on record about value of buffalo, therefore, I am of the opinion that compensation amount of Rs.60,000/- is appropriate instead of Rs.80,000/-. Hence, this second appeal deserves to be partly allowed.

14. In view of above, this appeal is partly allowed. The compensation amount of Rs.80,000/- is reduced to Rs.60,000/-. The appellant-defendant is directed to pay Rs.60,000/- to the respondent-plaintiff within a period of two months from today, failing which the respondent-plaintiff shall be entitled to get interest at the rate of 9% per annum from the date of this judgment.