
(1995) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : F.A. No. 102 of 1991

Madhya Pradesh Vidyut Mandal and Another	APPELLANT
Vs	
Geetabai and Others	RESPONDENT

Date of Decision : 01-08-1995

Acts Referred:

Citation : (1996) ACJ 149 : (1995) JLJ 790 : (1996) 2 LLJ 283

Hon'ble Judges : D.P.S. Chouhan, J

Bench : Single Bench

Advocate : G.S. Baghel, for the Appellant; Umesh Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chouhan, J.—The present appeal is directed against the judgment and decree dated April 11, 1991 passed by Mr. B.B.L. Shrivastava, District Judge, Ambikapur, Sarguja, whereby a decree is passed in favour of the plaintiff awarding compensation as a consequence of death of one Ra-jabali to his heirs and legal representatives. The operative portion of the order is extracted below:

xxx xxx xxx 2. Brief facts of the case are that in the night of April 27, 1988, a storm came and as a result of it, the wire consisting of 1,100 voltage electricity was hanging in the fields where persons were working and through this field the deceased Ra-jabali was passing and while so doing, he came into contact with the said hanging wire, since there was breakage of the bare wire.

3. A suit was filed by the widow of Rajabali, viz. Geetabai and his son Chetanram and daughter Ranmat. She was minor and was represented by her natural guardian, Geetabai. According to the case of the plaintiffs, the deceased while passing through ek marg(passage) in village Sakalo, came into contact with the electric wire. There was no net below the wire by way of safety measure and no such gauge even was provided for not allowing the wire hanging in such a manner so to touch anybody in the event of its breakage. The wire hanging was not taken serious note of as there was no repair job from time to time and no

periodical checking by lineman was being done. It was in the night at about 8 p.m. on April 27, 1988 while the deceased Rajabali was going from his house with his friend Karmgond, he got touched by the said wire and died on the spot as a result of electrocution.

4. The age of the deceased was 25 years and he was earning Rs. 360/- per month and was maintaining his family. After his death both the mental and financial conditions of the members of the family of Rajabali was seriously and adversely affected and a claim for Rs. 1,40,000/- by way of compensation was put forth. The claim was put forth under Fatal Accidents Act, 1855 (hereinafter referred to as "the Act")

5. The defence was that in the night in question, there came storm and on account of damage of the insulator, the wire got hanged and it was an unforeseen circumstance and the plea was that of a vis major. It was contended that Rajabali did not move with safety, otherwise the accident would not have taken place. If he would have taken the assistance of some light, i.e., torch, etc., in that event he would not have come into contact with the wire and at the time of accident, his age was between 38 and 39 and his income was not Rs. 360/- per month and that the accident took place on account of his own fault and as such the claim was liable to be dismissed.

6. The trial court framed the issues and recorded the findings that in connection with the high voltage bare line, no safety arrangements were made by the M.P. Electricity Board. It was also found that on account of storm and rains on April 27, 1988 at 10 p.m. the insulator got damaged and the bare electric wire got hanged. It was also found that in the night of April 27, 1988 at 8 p.m. Rajabali moved on foot on unusual track, without making any arrangement for protection or safety measures. Regarding the income of the deceased, it was found that he was earning Rs. 300/- per month and his age was found to be 32 years at the time of the accident. Regarding the negligence, the court recorded the findings that both the parties were negligent and on this basis a sum of Rs. 25,000/- was awarded as damages along with the decree for expenses.

7. Heard the learned counsel for the appellants, Mr.G.S. Baghel and the learned counsel for the respondents, Mr. Umesh Trivedi. The learned counsel for the appellants, on the question of negligence, submitted that it was not a case where the liability of the negligence can be fastened on the appellant Board as the deceased Rajabali was supposed to take care of his safety during the course of walking on the unusual track and that too in the night, in the course of movement and was further supposed to walk on the general and usual track with torch and by doing so, he could have avoided the accident

8. So far as the liability of the appellant is concerned, the appellant did not take proper precautions, about safety measures regarding high voltage bare line in village Sakalo and there was also no proper maintenance of the high voltage bare lines, knowing it well that the safety measures were inadequate, it was

expected of the appellant to take proper safety measures so that the bare line/wire may not come into contact with any person passing through by chance and it was on account of the negligence of the appellant that the occurrence took place.

9. So far as the submission regarding movement of the deceased Rajabali through the peculiar route is concerned, although he could have saved his life by using the torch in the night while walking through the unknown route, but it cannot be said to be a ground for depriving the family members of the deceased of a rightful claim, as the appellant was negligent in the maintenance of the bare wire and taking proper check-ups of the high voltage line. If the storm was high, then the electric current could have been cut off the high voltage bare wire, which was hanging down, should have been set right after the storm was over. As per the appellant, the storm came at 10 p.m., whereas the accident took place at 8 p.m. There does not appear to be any justification for the appellant Board to take the plea of vis major.

10. Apart from this, the bare wire of high voltage was hanging down during the night and there is no law that every person should move in the open fields through a particular passage and not otherwise, but the deceased took a different passage and the occurrence took place. No such provision was pointed out by the learned counsel for the appellant.

11. Earlier the time was granted for finding out the position under the rules but the learned counsel, instead of reading the law, has not responded and he finds it very difficult to bring to the notice of the court the particular provision of law regarding maintenance of high tension bare line and also regarding the requirement that a person moving in the night should possess a torch or make arrangement of light.

12. So far as the quantum of the award is concerned there is no dispute and I do not find that the amount awarded is in any way excessive.

13. Learned counsel for the respondents-claimants submitted that the learned court below has not awarded interest on the amount of award.

14. It is an admitted position that the learned counsel for the respondents has not filed any cross-objection but he submitted that the court has sufficient powers under the provisions of Code of Civil Procedure. The learned counsel for the respondents submitted that he has moved an application in the appeal for enhancement of the compensation as well as for awarding interest.

15. That application was rejected by this Court. It is an admitted fact that the learned counsel for the respondents did not file any cross-objection. Such an application was misconceived and was rightly rejected. Learned counsel for the respondents further submitted that under Order 41, Rule 33, Civil Procedure Code, the court has got ample power to pass any order as the facts and circumstances of the case may require. So far as the power of the court is

concerned, it is not the subject matter of the dispute. It is not a case where the court should exercise its power when the law provides for a forum to the respondents and they did not avail that forum by way of filing any cross objection. This part of the prayer of the respondents is, therefore, sans merit.

16. As a result of the aforesaid, the appeal is sans merit and is accordingly dismissed with costs.