
(2017) 01 KAR CK 0262
In the Karnataka High Court
Case No : 7359 of 2011

Managing Director of Gescom & Ors

APPELLANT

Vs

Sanna Bhimanna & Anr

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#), [Section 96](#) - Second appeal - Appeal from original decree
[Limitation Act, 1908](#), [Article 113](#), [17](#)

Citation : (2017) 01 KAR CK 0262

Hon'ble Judges : A. S. Bopanna

Bench : SINGLE BENCH

Advocate : R.S. Patil, A.S. Rawoor, Ganesh Naik, S.M. Kandkur, Archana P. Tiwari

Judgement

1. The appellants are before this Court in this second appeal under Section 100 of CPC assailing the concurrent judgments of the Courts below.
2. The parties are referred to in the same rank as assigned to them before the trial Court for the purpose of convenience and clarity.
3. The plaintiff was before the trial Court in O.S.No.28/2010 contending that his son Nimbanna who was aged about 25 years was doing coolie as well as agricultural work and when he was going to tie the bullock to the tree beside the electric pole, came in contact with the live wire and was electrocuted. In that view, contending that he was earning about Rs.250/- per day, had sought for appropriate compensation. The defendants on appearing in the suit had filed their objection statement and disputed the claim as put forth by the plaintiff. It was contended that there is no material to establish that the son of the plaintiff had died due to electrocution or at least due to the negligence of the defendants. It was further contended that since the claim is under the Fatal Accidents Act, it is barred by limitation and the same is to be rejected.
4. The trial Court on taking into consideration the rival contentions has framed as

many as five issues for its consideration as follows: (1) Whether the plaintiff proves that, his son Nimbanna S/o: Bheemanna was died due to shock of the electricity, when he came in contact with electric pole near his house, due to negligent act and deficiency of service on the part of the defendant?

(2) What was the age and occupation and income of the deceased on the date of accident?

(3) Whether the defendants prove that suit is time barred?

(4) Whether plaintiff entitle suit reliefs as prayed?

(5) What order or decree?

5. The plaintiff examined himself as PW.1 and marked the document at Exs.P1 to P5. An employee of the defendant was examined as DW.1 and the documents at Exs.D1 and D2 were relied upon.

6. The trial Court on analysing the contentions and on taking into consideration the evidence available before it has arrived at the conclusion that the death was due to electrocution in view of the hanging live wire as it is the negligence of the defendants and as such the compensation of Rs.3,12,000/- with interest is to be paid by them. The suit was accordingly disposed of by the judgment dated 25.09.2010. The defendants claiming to be aggrieved had preferred an appeal under Section 96 of CPC in R.A.No.43/2010. The Lower Appellate Court on re-appreciating the evidence available before it and also taking into consideration the legal position has upheld the judgment and decree of the trial Court by its judgment dated 23.06.2011. The defendants claiming to be aggrieved by the said concurrent judgments of the Courts below are before this Court in this appeal.

7. The learned counsel for the appellants while assailing the judgment would contend that both the Courts have committed an error inasmuch as the Courts have failed to take note that the suit was filed beyond the period of limitation as provided under the Fatal Accidents Act and as such the suit ought to have been dismissed. It is his further contention that even otherwise there was no material to indicate that the death was due to electrocution on account of the negligence of the defendants and in such circumstances the liability could not have been fastened on the defendants. It is further contended that even otherwise the compensation as decreed is without basis and the judgments are liable to set aside.

8. The learned counsel for the defendants would however seek to sustain the judgments passed by the Courts below.

9. In the light of the contentions put forth, this Court is required to take note of the same, keeping in view the position of law relating to the limited interference possible by this Court in a second appeal of the present nature. Therefore, what is necessary to be considered herein is as to whether both the Courts while

arriving at such concurrent findings have adverted to the material and evidence available on record and have kept in view the legal position before arriving at the conclusion in that regard.

10. A perusal of the judgments rendered by the Courts below would disclose that the evidence as tendered through PW.1 has been referred extensively and the documents relied on namely the FIR which was at Ex.P1 and also the post mortem report at Ex.P3 as well as the inquest panchanama at Ex.P4 were taken into consideration by the Courts below to indicate that the accident relating to the electrocution had occurred on 13.11.2007 between 2.00 & 3.00 p.m. In that regard, a police complaint had been filed in the jurisdictional station and the post mortem report indicated that the death was due to electrocution.

11. In that light, when the fact of the accident having occurred and the death having occurred due to electrocution had been established and when there is no other material to dispute that the deceased had not come in contact with the live wire in the manner as had been described by them, when he tying the bullocks to the tree near the electric pole, the obligation of the defendants in maintaining such electric wire and being the authority in-charge of the same will have to be taken into consideration. In such circumstance, when there is no evidence available on record to indicate that the accident had not occurred in the manner as had been contended by the plaintiff and when the death due to electrocution was established, the Courts below were justified in arriving at the conclusion that the death was due to the negligence of the defendants and the plaintiff was to be compensated.

12. Insofar as the contention that the suit was barred by time, the Courts below have taken note of the fact that the accident had occurred on 30.11.2007 and the suit was instituted on 19.01.2010. It is no doubt true, that the suit was filed after the period of two years as provided under the Fatal Accident Act, but within the period of three years as provided under the Limitation Act for the purpose of recovery of damages. In that regard, both the Courts have referred to the Division Bench judgment of the High Court of Kerala in the case of Kerala State Electricity Board and Another v. K. V. Bhaskaran Nair and others, reported in AIR 2003 Kerala 57. In that light, the Courts had taken note of the law laid down therein that in the said facts Article 113 of the Limitation Act is applicable and not Article 82 as claimed by the defendants. In that view, both the Courts have arrived at the conclusion that the suit being within time, the consideration for payment of damages is to be made.

13. In that regard, while taking into consideration the claim for damages, both the Courts have also kept in view, the legal position relating to the grant of compensation in the case of accident by keeping in view the principle laid down by the Hon"ble Supreme Court while awarding the compensation in respect of the Motor Vehicle cases and in that light on taking note of the claim as put forth by the plaintiff for the compensation has taken the notional income of the deceased at Rs.3,000/- per month and on deducting 3rd towards the personal

expenses has thereafter adopted an appropriate multiplier and granted the compensation. Therefore, if all the above aspects are kept in view, it is seen that both the Courts below have adverted to the evidence available on record, kept in view the legal position and have thereafter arrived at their concurrent findings. In that view, I see no error committed by the Courts below nor do I find any substantial question of law for consideration herein. Accordingly, the appeal being devoid of merit stands disposed of. No costs.