
(2017) 08 TP CK 0005
In the Tripura High Court
Case No : 12 of 2013

Mrs. Maya Rani Debbarma, & Ors.

APPELLANT

Vs

Tripura State Electricity Corporation Ltd. & Ors.

RESPONDENT

Date of Decision : 09-08-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 304A](#)
a> - Causing death by negligence

Citation : (2017) 08 TP CK 0005

Hon'ble Judges : T. Vaiphei, S. Talapatra

Bench : Division Bench

Advocate : Sankar Deb, S.B. Debnath, P. Roy Barman, P. Chakraborty

Judgement

1. This bunch of three regular first appeals arising out of the same suit and are against the same judgment challenged by the plaintiffs and the defendants No. 1 and 2 on the one hand and the defendants No. 3, 4, and 5 on the other hand. RFA No. 12 of 2013 is preferred by the plaintiffsappellants for enhancement of the compensation awarded by the learned Civil Judge, Senior Division, Court No. 2, West Tripura, Agartala. RFA No. 13 of 2013 is preferred by the Power Grid Corporation of India Limited (the defendant No.3) for setting aside the same judgment and decree on the ground that it is not guilty of any negligence and is, therefore, not liable to pay the compensation so awarded. RFA No. 8 of 2014 is preferred by the Tripura State Electricity Corporation Limited (Defendant No. 1) for exonerating it from the liability to pay the compensation awarded, the liability to satisfy thereof should be fastened upon the defendants No. 1 and

2.

2. For simplification, the appellant No. 1, 2, 3 and 4 in RFA No. 12 of 2013 shall be referred to as the plaintiff No. 1, 2, 3 and 4 respectively. The plaintiff No. 1 is the wife of the deceased, late Chhatrajit Debbarma, while the plaintiffs No. 2, 3 and 4 are his son and daughters. The appellant No. 4 was a minor at the time of the institution of the suit and instituted the suit through her mother, the

appellant No. 1. Similarly, the appellant in RFA No. 13 of 2013 shall be referred to as the defendant No. 3. Likewise, the appellants No. 1 and 2 shall be referred to as the defendants No. 1 and 2. The non-appealing party (Mr. Shib Bahadur Sunar) shall be referred to as the defendant No. 5. The facts of the case, as pleaded by the plaintiffs, are that on 20-7-2010 at about 5.30 PM, the deceased, after taking bath, spread his wet cloths on the iron wire at the house of his cousin, Lebu Debbarma. As soon as he threw his cloths, he was electrocuted and in the process sustained serious injuries. He was immediately taken to Khumulwang Hospital and as his condition got worsened, he referred to GB Hospital, Agartala where he was declared brought dead. In connection with this accident, the police registered Radhapur P.S. Case No. 8 of 2010 U/s 304-A IPC; GD entry to this effect was also recorded being No. 534 dated 21-7-2010 at the GB Outpost, and post mortem examination was conducted on the dead body of the deceased. In the meantime, the Senior Manager (E), Jirania Electrical Sub-Division (defendant No. 2) in his letter dated 21-7-2010 admitted that the death of the deceased was caused by electrocution in the premises of the said Lebu Debbarma - Killingrey para where electricity was installed under Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY).

3. It is also the case of the plaintiffs that the deceased was working as Assistant Teacher under the Government of Tripura, was aged about 49 years old at the time of his death and is survived by them (the four plaintiffs). His salary certificate showed that his gross salary was Rs.21,298/-. According to the plaintiffs, the deceased died by electrocution due to the negligent acts of the defendant No. 3, 4 and 5 and the defendant No. 1 and 3 being the principal employer are jointly and severally liable to compensate them. They, therefore, instituted the suit against the defendants for payment of compensation to the order of Rs.38,16,000/-.

4. The suit was resisted by all the defendants by filing their respective written statements. According to the defendant No. 1 and 2, a tripartite agreement was executed amongst the Rural Electrification Corporation Ltd., Govt. of Tripura, State Electricity Corporation Ltd. and Power Grid Corporation of India Ltd. whereunder it was agreed that the defendant No. 3 would implement the programme under RGGVY as per the project of the defendant No. 1 and 2, whereas the defendant No. 4 would undertake the work of installation of BPL Kit by the defendant No. 3. The defendant No. 4 accordingly executed several programs initiated by the defendant No. 1 and 2 prior to the alleged accident. However, the installation of BPL Kit and erection of power connection was not intimated to the defendant No. 1 and 2 and the defendant No. 4, being the authorized agency under the defendant No. 3, erected the power connection without system and procedure as well as contract and it was due to the negligence of the defendant No. 3 and 4 that the accident took place; they are equally liable for making payment of the compensation, if any, to the plaintiffs.

5. The case of the defendants No 3 and 4 is that the defendant No. 4 and 5

installed BPL kit along with its accessories at the house of the said Lebu Debbarma. The role of the defendant No. 4 and 5 was strictly confined to installation of the BPL Kit at the house of the said Lebu Debbarma; the BPL Kit with its accessories was duly installed by them and they did not suffer defects or shortcomings. The defendant No. 1 was entrusted with the task of energizing the installation. The BPL Kits installed at the house of Lebu Debbarma were not energized and not only that nearby LT Line from where the connection was supposed to be given to the premises of Lebu Debbarma, was a dead line having no power in the circuit. So, the defendants No. 3, 4 and 5 are not responsible to pay any compensation to the plaintiffs; they are not entitled to receive compensation from the defendants No. 1 and 3 either.

6. On the pleadings of the parties, the trial court framed the following issues:

1. Is the suit maintainable in its present form and nature?
2. Whether on 20-7-10 at about 5.30 p.m., the husband of the plaintiff No. 1, Lt. Chhatrajit Debbarma died out of an incident of electrocution occurred due to negligence on the part of the defendants?
3. Whether the plaintiffs are entitled to get compensation of Rs.38,16,000/- for immature death of Chhatrajit Debbarma due to electrocution?
4. Whether the defendants are jointly liable to pay the compensation to the plaintiffs under tortuous liability?
5. To what other relief/reliefs the plaintiffs are entitled to get?
7. The plaintiffs examined three witnesses and exhibited several documentary evidence marked Exbt. 1 series, Exbt. 2 series and Exbt. 3 to substantiate their case. The defendants No. 1 and 2 relied upon the oral evidence of one witness, whereas the defendants No. 3 and 4 examined two witnesses. No documentary evidence was exhibited by any of the defendants. At the conclusion of the trial, the trial court passed the impugned judgment and decree, which is under challenge by all the parties in separate three appeals filed by them.
8. Mr. Shankar Deb, the learned senior counsel for the appellants, submits that there are sufficient evidence to prove that the defendants are guilty of negligence and that the compensation awarded by the trial court did not take into the latest position of law for awarding compensation such as future prospect of income of the deceased, 1/4 deduction to be made, the loss of consortium and funeral expenses; the impugned judgment is liable to be modified for substantial enhancement of the compensation already awarded. He strongly relies on the decision of the Apex Court in *Sarla Verma v. DTC* and another, (2009) 6 SCC 121 in support of his contention. Mr. P. Chakraborty, the learned counsel for the defendants No. 1 and 2, however, submits that the impugned judgment is based on surmise and conjecture. According to him, defendants No.3 with the defendants No. 4 and 5 were jointly entrusted with the task of installing BPL Kits in the premises of the beneficiaries with previous intimation to the defendants

No. 1 and 2 whereafter the latter would provide power connection on the said kits, but, in the instant case, the staff of the defendant No. 4 provided power connection without prior intimation to them. Under such circumstances, submits the learned counsel, the defendants No. 1 and 2 cannot be liable to pay the compensation; this is consistent with the finding of the trial court that "The defendant No. 4 i.e. IPPL being the authorized agency under the defendant No. 3 i.e. the Power Grid erected the power connection without system and procedure as well as contract and hence due to the negligence on the part of the defendant nos. 3 and 4 i.e. the Power Grid and IPPL the alleged accident took place and as such the defendant nos. 3 and 4 are equally and severally liable for making any payment of compensation to the plaintiffs. Mr. P. Roy Barman, the learned counsel for the defendant No. 3 contends that the defendant No 3 jointly with the defendants No. 4 and 5 were entrusted with the task of installing the BPL Kits in the premises of the beneficiaries whereas the defendants No. 1 and 2 were responsible for energizing the installation and, as such, the defendant No. 3 cannot be held liable for the death of the deceased as it was not the case of the plaintiffs that the electrocution was due to the defects of the installed BPL Kits. In other words, according to the learned counsel, the trial court has completely overlooked the glaring fact that the energization of the installed BPL Kit was the responsibility of the defendants No. 1 and 2 and not that of the defendant No. 3 and that at the time of the installation, no accident took place; the trial court is wrong in fastening the liability to pay the compensation upon the defendant No. 3. He, therefore, strenuously urges this Court to exonerate the defendant No. 3 of the liability to pay the compensation.

9. We have given our thoughtful consideration to the submissions advanced by the learned counsel appearing for the rival parties. We have also carefully perused the impugned judgment and other materials on record. At the outset, it may be noted that there is no dispute about the death of the deceased at the house of his cousin, Lebu Debbarma, due to electrocution on 20-7-2010 at about 5.30 PM. The first point for consideration in this appeal is, therefore, whether there is sufficient evidence to support the conclusion of the trial court that the death of the deceased was caused by the negligence of the defendants. For better appreciation, the findings of the trial court with respect to Issue No. 2 may be reproduced below:

"The defendants No. 1 & 2 in their written statements stated that the defendant No. 2 had lodged a complaint with Radhapur P.S. stating the fact that of alleged accident and it was also intimated that the defendants No. 3 & 4 were the implementing Agency and they were bound to pre-intimate (?) about the installation of BPL Kits in any village under RGGVY Program. But the defendants No. 3 & 4 in the present case not only installed the BPL Kits without giving any intimation to the defendants No. 1 & 2 but also gave power connection beyond the procedure and system. The defendants No. 1 & 2 had no knowledge about the said installation of power connection in the house of Sri Lebu Debbarma and the defendant No. 5 Sri Shib Bahadur Sonar, Gangman gave the connection in

the house of the said Lebu Debbarma. The police investigation into the said case was also ended with submission of charge sheet in final form under section 304-A of IPC against the defendant No. 5 who was a workman under the defendant No. 4 i.e. Indo Power Project Ltd. The police personnel after collecting evidence found prima facie evidence to the effect that the defendant No. 5 charged the power connection negligently by which the victim Chhatrajit Debbarma died out of electrocution.

D.W.3 Sri Sajal Kr. Das, the witness of the defendants No. 1 & 2 in his oral evidence stated the aforesaid facts once again and admitted the alleged incident of electrocution as narrated by the plaintiffs in their plaint. PW 1 i.e. plaintiff No. 1 Smt. Maya Rani Debbarma at the time of recording her oral evidence proved some documents related to Radhapur P.S. case No. 08 of 2010 under section 304A of IPC from the final report of the said police case and the post mortem report of deceased Chhatrajit Debbarma in Exbt. 1 series. It is found that victim Chhatrajit Debbarma died on 20-7-2010 at about 5.30 PM at Khillingraipara under Radhapur P.S. out of electrocution. All the defendants in their oral evidence also admitted the death of Chhatrajit Debbarma out of electrocution and as such I have no hesitation to opine that the husband of the plaintiff No. 1 Lt. Chhatrajit Debbarma died out of an incident of electrocution on 20-7-10 at about 5.30 p.m. and admittedly that accident was occurred due to negligence on the part of one or each and every defendants of the suit."

10. From the evidence available on record, it is thus clearly established that the defendant No. 3, the defendant No. 4 and the defendant No. 5 were jointly involved in the installation of the BPL Kit in the house of the Lebu Debbarma (PW-2). In his evidence, PW-2 deposed that he was holding BPL card under RGGVY, was sanctioned electrical connection under the said scheme and the connection was given to his house on 20-7-2010. He further testified that the said connection was made by one Shib Bahadur Sonar of Indo Power Projects Ltd., Power Grid Corporation of India and that while installing the power connection, he (PW-2) was told that the said authorities were authorized to install the electrical connection. On the other hand, DW-1, who was authorized by and deposed on behalf of the defendant No. 3, deposed that M/S Indo Power Project Ltd. (defendant No. 4) was engaged as the implementing agency for the installation of BPL Kit along with accessories in the premises of Lebu Debbarma. For the said installation, work order was issued to the defendant No. 5. He testified that the BPL Kit was installed at the house of Lebu Debbarma by the defendant No. 5, but his role was strictly confined to installation of the BPL Kit, and did not extend to power connection. He further deposed that the said BPL Kit and accessories was duly and properly installed, and the BPL Kit so installed did not suffer from any defects or shortcomings. He also deposed that the defendant No. 1 was entrusted with the task of energizing the installation and that at the nearby LT line, from where connection was supposed to be given to the premises of the said Lebu Debbarma, there was a dead line having no power in the circuit. DW-3, who was Senior Manager of Defendant No. 1, in his evidence partly

admitted that due to negligent act on the part of the defendant No. 5, the deceased died. PW-2 deposed that the power connection was made by the defendant No. 5 and that while installing the power connection, he was told that the said authorities were authorized to install the electrical connection.

11. From the aforesaid oral evidence adduced by the parties, it becomes clear that the defendant No. 1 and the defendant No. 3 and 4 are indulging in blame game and would like to claim that there was no negligence on their part. However, even if no concrete evidence can be established, as contended by the learned counsel for the defendants, this is a fit case for applying the maxim *res ipsa loquitur*. The general rule is that the onus of proving negligence is on the plaintiff. He must show that he was injured by an act or omission for which the defendant is in law responsible. There must be proof of some duty owed by the defendant to the plaintiff, some breach of that duty, and an injury to the plaintiff. Further, it must be shown that the negligence is the proximate cause of the damage. An exception to this rule is the maxim *res ipsa loquitur*. Thus, accidents may be of such a nature that negligence may be presumed from the mere fact of the accident, the presumption depending on the nature of the accident. The legal position is lucidly restated by the Apex Court in *Pushpabai Purshottam Udeshi and others v. M/s. Ranjit Ginning & Pressing Co. (P) Ltd.*, (1977) 2 SCC 745 thus:

"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states: "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part."

(Italics supplied for emphasis)

12. In the instant case, it has been shown by the plaintiffs with sufficient evidence that the responsibility for installing the BPL Kit at the house of the said Lebu Debbarma was given by the defendant No. 1 to the defendants No. 3, who, in turn, appointed the defendant No. 4 as the implementing agency for the installation of the BPL Kits in the village. It was the defendant No. 4, which through the defendant No. 5, its gangman, installed the BPL Kit with its accessories in the premises of the said Lebu Debbarma. DW-3, on behalf of the Power Grid Corporation, in his evidence, deposed that the defendant No. 4 and 5 installed BPL Kit with its accessories at the premises of the said Lebu Debbarma, but their role was strictly confined to the installation of the BPL Kit thereat and nothing more and that the BPL Kit was installed properly and without any defects or shortcomings. He categorically stated that the defendant No. 1 was entrusted with the task of energizing the installation and that the nearby line wherefrom connection was supposed to be given to the premises of the said Lebu Debbarma was a dead line having no power in circuit. In other words, what DW-3 stated is that no power connection was given by the defendant No. 3, 4 and 5 in the premises of the said Lebu Debbarma. Against this statement, DW-3, who was the Senior Manager of the defendant No. 1, testified that the installation of BPL Kit and the erection of power connection was not intimated to the defendants (?) and the defendant No. 4, being the authorized agency of the defendant No. 3, erected the power connection without system and procedure as well as contract and hence due to their negligence, the alleged accident took place and that the defendant No. 3 and 4 are equally and severally liable to pay the compensation if the same was to be awarded. This part of the statement of DW-3 is not denied or disputed by the defendant No. 3 and 4 in their cross-examination. It is interesting to note that the defendants No. 3 and 4 did not take the evidence of the defendant No. 5, who, according to the police report, gave the power connection to the premises of the said Lebu Debbarma negligently and without intimation to the defendant No. 1. Be that as it may, it is now as clear as daylight that the death of the deceased was caused by electrocution at the house of his cousin, Lebu Debbarma where the defendants admittedly installed the BPL Kit. Though it is not easily ascertainable as to whether the faulty power connection was given by the gangman of defendant No. 4, yet, at any rate, there was remote possibility of a third party giving the power connection. In any case, hardship has been caused to the plaintiff as the true cause of the accident is not known to him as the same is solely within the knowledge of the defendants who installed the BPL Kits at the house of the said Lebu Debbarma. In other words, this is a case where the plaintiff could prove the accident but could not prove how it happened to establish negligence on the part of the defendants. We are, therefore, of the considered view that this hardship can be avoided by applying the principle of *res ipsa loquitur* to the peculiar facts of this case. We said so because the probability that the electrocution in this case is due to the negligence of the defendants is materially greater than that is due to any other

cause, and the circumstances contributing to the electrocution of the deceased were within the control of the defendants. The burden on the defendants to rebut the inference of negligence raised by the maxim *res ipsa loquitur* cannot be discharged by them merely by showing that the nearby line wherefrom connection was supposed to be given to the premises of the said Lebu Debbarma was a dead line having no power in circuit inasmuch as evidence was led by the appellants to the effect that the defendant No. 5 gave the power connection without the knowledge of the defendant No. 1 and 2. Under the circumstances, we hold that all the defendants are jointly and severally liable for the accident which took place on 20-7-2010 at the premises of the said Lebu Debbarma where BPL Kit and its accessories were installed, which resulted in the electrocution of the deceased and caused his death.

13. Having held that the defendants are jointly and severally responsible for the death of the deceased, the next point for consideration is whether the compensation awarded by the trial court upon the appellants is adequate or is warranted by the facts on record. The trial court found that the deceased was 49 years at the time of the accident and was serving as the Head Master of Government J.B. School with a monthly salary of Rs.21,298/-. As he was 49 years old at the time of the accident, the trial court adopted a multiplier of 13 and deducted 1/3rd from his salary as his personal and living expenses. The trial court also awarded a sum of Rs.5,000/- for loss of consortium, Rs.2,500/- for loss of estate and Rs.2,000/- for funeral expenses. The total amount of compensation so awarded by the trial court worked out to be Rs.22,24,492/- which would carry interest at the rate of 6% per annum from the date of the suit, i.e. 10-11-2010.

14. In *Sarla Verma* case (supra), the Apex Court has held that where the dependant family members of the deceased is 4 to 6, the deduction should be to the extent of 1/4th and that there should also be addition of 30% of the actual salary as future prospect if the deceased was in the age group of 40 to 50. That is the law laid down by the Apex Court which is binding upon us. Thus, from salary of the deceased, i.e. Rs.21,298/- per month at the time of his death, if 1/4th is deducted, it would come to Rs.15,974/- to which shall be added 30% as future loss of income thereby making it a sum of Rs.22,363.40/-, which, when multiplied by 12 becomes Rs.2,68,360/-. When this amount is multiplied by a multiplier of 13, the total loss of dependency of the deceased to his family will work out to be Rs.34,88,680/-. In the same judgment, the Apex Court awarded a sum of Rs.5,000/- under the loss of estate, another sum of Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses. However, in view of subsequent decisions awarding higher amounts under the aforesaid heads, the ends of justice would be met if the appellant No. 1 is awarded Rs.50,000/- for loss of consortium, Rs.25,000/- each to appellants No. 2, 3 and 4 making it a total of Rs.75,000/- for loss of love and affection instead of loss of estate and another sum of Rs.15,000/- for funeral expenses. Thus, the total amount of compensation payable to the appellants is Rs.36,28,680/-. The appellants will

also be entitled to interest at the rate of 6% per annum from the date of the institution of the suit.

15. For the afore-mentioned reasons, RFA No. 12 of 2013 succeeds. The defendant No. 1, 3 and 4 are, therefore, jointly and severally held liable to the pay the compensation together with interest @6% per annum from the date of institution of the suit. The impugned judgment and decree dated 08.04.2013 stands modified. No costs. Let a decree be prepared accordingly. In the light of our decision in RFA No. 12 of 2013 partly allowing the appeal, the connected RFA No. 13 of 2013 and RFA No. 8 of 2014 are bereft of merit and are, therefore, dismissed but without costs. Transmit the L.C. record.