

(2017) 03 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : 49 of 2014

State of J. & K. & Ors

APPELLANT

Vs

Mst. Rashida Bi

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

[Evidence Act, 1872](#), [Section 106](#) -
Burden of proving fact especially within knowledge

Citation : 2017 0 AAC 1966

Hon'ble Judges : Janak Raj Kotwal

Bench : SINGLE BENCH

Final Decision : Dismissed

Judgement

1. These are two appeals a common judgment and decree, dated 12-12-2013 rendered by the learned District Judge, Poonch, whereby two suits

for compensation have been allowed.

2. Heard learned counsel for the parties and perused the record.

3. Both the suits arose from a single incident of electrocution in which two persons, namely, Abdul Gani and Mohd. Latief, lost their lives. Civil Suit

No. 18 was filed by the wife of deceased Abdul Gani, herein respondent, Afsar Bi and Civil Suit No. 19 was filed by the mother of deceased

Mohd. Latief, herein respondent Rashida Bi.

4. Case set up by the plaintiff-respondents before the trial court was that on 5-7-2002 deceased Abdul Gani and Mohd. Latief had gone to their

field together at Surankote. Due to negligence of the electricity department in properly maintaining the electric wires, an electric wire from the main

pole was lying on the ground. Both the deceased received electric shock from this wire and died on spot. First Information Report No. 105/2002

in this regard was registered at police Station, Surankote against the officials of the electric department. Plaintiffs, therefore, sought compensation

of eight lakh rupees for the death Abdul Gani and ten lakh rupees for the death of Mohd. Latief contending that the former was a mason and the

latter, a carpenter, they had been earning Rs. 300/- per day each and that plaintiffs respectively were dependent upon them. Defendants-appellants

contested the suits on the ground that there was no negligence on their part in maintaining the electric wires.

5. Learned trial court framed identical issues in both the suits, which I reproduce hereunder :

"Suit No. 18 :-

1. Whether on 5-7-2007 due to the negligence of employees of PDD, electric wires from main pole were lying on the ground in Surankote due to

which husband of plaintiff working in the field received electric shock and died on spot? OPP

2. In case issue No. 1 is proved in affirmative, what is the amount of compensation to which the petitioner is entitled? OPP

3. Whether the plaintiff has no cause of action to file the suit? OPD

4. Relief."

Suit No. 19 :-

1. Whether son of plaintiff Mohd. Latief s/o Abdul Aziz r/o Surankote while working in his field on 5-7-2002 in Surankote received electric shock

due to the electric wires which were lying on the ground due to negligence of duties of the employees of PD Deptt.? OPP

2. In case issue No. 1 is proved by plaintiff what is the amount of compensation to which she is entitled? OPP

3. Whether the plaintiff has no cause of action against the defendants? OPD

4. Relief."

6. In Suit No. 18, the plaintiff, besides herself entering the witness box, produced Mohd. Shafeeq (PW-1), Mohd. Shakoore (PW-2), Kamr Din

(PW-3), Dr. Mushtaq Hussain Shah (PW-4) and Farooq Ahmed, ASI (PW-5) as her witnesses. Defendants in this case produced only one

witness namely, Altaf Din. Likewise, in Suit No. 19, the plaintiff, besides herself appearing the witness box, produced Abdul Aziz (PW-1), Mohd.

Mushtaq (PW-2), Dr. Mushtaq Ahmed Shah (PW-3) and Farooq Ahmed (PW-4) as witnesses. Defendant did not lead any evidence in this case.

7. Learned trial court after analysing and appreciating the evidence held that both the deceased, Abdul Gani and Mohd. Latief, had died as a result

of injuries received in the fatal accident of electric shock from live wire of the defendants hanging down from a pole on 5-7-2002 at Surankote in

the paddy field due to negligence of the defendants and therefore, decided issue No. 1 in favour of the plaintiffs.

8. For determination of the compensation payable to the plaintiffs-respondents, learned trial Court applied multiplier method and, while taking

monthly income of each of the deceased as Rs. 5,000/- awarded compensation of Rs. 7,28,112/- in favour of the plaintiff in Suit No. 18 and Rs.

7,02,000/- in favour of the plaintiff in Suit No. 19. Learned trial Court, therefore, decreed both the suits with 7.5% per annum interest in favour of

the plaintiffs-respondents as against defendants-appellants.

9. The impugned judgment is assailed on the grounds that the suits have been decreed by the trial court without returning any finding in regard to

the negligence on the part of the appellants inasmuch as all the plaintiff's witnesses have failed to prove that there was any negligence on the part

of the department in maintaining the electric wires and that factum of death due to electric shock was not proved as plaintiffs did not produce any

Doctor before the trial court. It is contended that burden of proving the negligence and proximity between the negligence and death was on

plaintiffs. In addition, it is contended that impugned judgment is based on shaky and uncorroborated evidence and no finding in regard to degree of

negligence has been recorded by the trial court. Appellants have assailed the judgments on the quantum of compensation also contending in this

behalf that income of the deceased has been assessed on higher side without any documentary proof. It is contended that income of each of the

deceased should have been taken as Rs. 3000/- per month and 1/3rd of the total income should have been deducted towards his personal expenses.

10. Submissions of learned Additional Advocate General, Mr. Rohit Kapoor, appearing on behalf of the appellants were in line with the averments

made in the appeal. Mr. Kapoor reiterated all the grounds taken in the memorandum of appeal in each case. On the other hand, Mr. K. K.

Pathan, learned counsel appearing on behalf of the respondents supported the impugned judgment.

11. The first and primary contention raised on behalf of the appellants is that respondents-plaintiffs have failed to lead sufficient evidence to prove

negligence on the part of the electric department-appellants in maintaining the electric wires. This contention from its very nature, however, is not

sustainable in the fact and circumstances of both the cases. It is noticed that the factum of death of the two persons by electrocution in the manner

as stated in the plaint has not been denied by the appellants-defendants in their written statements in both the cases. As regards the allegation of

negligence on the part of the department in maintaining the electric line, the reply of the appellants in their written statement is that they were not

negligent in maintaining the electric wires. Contextually, DW-Alaf Din, lineman, in his deposition before the trial court in Suit No. 18, which

provides the only evidence on behalf of appellants, has admitted that on reaching at the place of incident after getting information about the incident

he had seen that the wire had snapped from the insulator and was hanging in air and that this had happened due to thunderstorm in the night.

12. The snapping of the electric wire from the insulator, therefore, was admitted on behalf of the respondents. This factum having been admitted,

appellants-defendants were required to lead sufficient and reliable evidence to prove that there was a thunderstorm in the night, that the snapping of

the wire could have been caused by the said thunderstorm and that the snapping of the wire in the said thunderstorm is not attributable to any

negligence in maintaining the electric line. Not only that, appellants were required to prove also that all measures were taken to meet with the

aftermath of the thunderstorm. Correct it is that burden of proving issue No. 1 and in that the negligence on the part of the appellants was on

respondents-plaintiffs but in facts and circumstances of the case onus of proof of the factum that there was no negligence shifted to the appellants.

This legal position is incorporated in Section 106 of the Evidence Act, which provides that when any fact is especially within the knowledge of any

person, the burden of proving that fact is upon him. The wire having snapped from the insulator on the pole, respondents-plaintiffs cannot be

expected to have said anything more than that this happened due to negligence on the part of the department, that is, appellants. Whether the

electric line had been properly maintained according to prescribed standard and there had been no negligence on their part are the facts, which were within the technical knowledge of the appellants and they were required to prove the same. The appellants in their written statement in both the cases and through the evidence of their lineman in one case, however, having contented with simple denial of negligence on their part and attributing the snapping of the wire to thunderstorm without leading any evidence in this behalf, cannot be held legally correct in saying that negligence on their part has not been proved.

13. In regard to quantum of compensation awarded by the learned trial court, the contention in ground (d) in the memorandum of appeal is that the monthly income of the deceased, as they were having no settled income, should have been taken as Rs. 3,000/- only. Learned trial court, however, has noticed the evidence, and rightly so, that each one of the deceased was earning Rs. 200/- to Rs. 400/- per day and in backdrop of such evidence has taken per day income of either of them as Rs. 200/- and monthly income as Rs. 5000/- by taking the total number of working days in a month as 25. There is no rational in the contention that monthly income of each of the deceased should have been taken Rs. 3000/- and reasonable view would, be that a grown up person will earn Rs. 200/- a day for 25 days a month, also having regard to minimum requirements of life in the present day. Learned trial court, therefore, cannot be said to have committed any error of law or fact in taking monthly income of each of the deceased as Rs. 5000/-.

14. Learned trial court has correctly applied the principle of enhancement of income, deduction towards living and personal expenses and the multiplier of having regard to age of the deceased on the basis of the landmark judgment in *Sarla Varma and Ors. v. Delhi Transport Corporation and Anr.*, reported as 2009 (3) Supreme 487 : (AIR 2009 SC 3104) followed by the judgment in *Santosh Devi v. National Insurance Company Ltd. and Ors.*, reported as AIR 2012 SC 2185.

15. For all that said and discussed above, these appeals have no merit as the judgment rendered by the learned trial court does not call for any interference in appeal by this Court.

16. Both these appeals are, therefore, dismissed. Decree sheet be drawn

accordingly and record of the trial court be remitted back along with a copy of this judgment.

17. Disposed of.

Appeal dismissed.