

**(2023) 10 J&K CK 0003**  
**In the Jammu And Kashmir High Court**  
**Case No : Civil First Appeal No. 15 Of 2010**

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|---------------------------------------|------------|
| State Of Jammu And Kashmir And Others | APPELLANT  |
| Vs                                    |            |
| Nirmala Devi And Others               | RESPONDENT |

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**Date of Decision :** 05-10-2023

**Acts Referred:**

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 201, 304A

**Citation :** (2023) 10 J&K CK 0003

**Hon'ble Judges :** Sanjay Dhar, J

**Bench :** Single Bench

**Advocate :** Amit Gupta, K.L. Sharma

**Final Decision :** Dismissed

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## Judgement

Sanjay Dhar, J

1) The appellants have challenged the judgment and decree dated 13.03.2010 passed by the Additional District Judge, Kathua (hereinafter to be referred as the trial court), whereby the suit of the respondents for recovery of compensation has been decreed.

2) It appears that the respondents/plaintiffs filed a suit against the appellants/defendants seeking recovery of a sum of Rs. 5,00,000/- (five lacs) as compensation on account of death of Mohinder Singh, who happened to be the husband of respondent No. 1 and father of respondent Nos. 2 to 5. It was pleaded by the plaintiffs that on 04.01.2007 at about 11 am, while deceased Mohinder Singh was grazing his cattle at Mehtabpur Khad, he came in contact with a live 11 KV electric wire that was installed for the purpose of transmission of electricity by the defendant-department. According to the plaintiffs, the electric wire was installed in a careless and negligent manner and the same was not properly maintained, as a result of which, it fell down on the ground and deceased Mohinder Singh came in contact with it. This resulted in electrocution and consequent death of the deceased on spot. It was pleaded that it is the duty

of the defendant-department and its employees to maintain the electric lines and wires and that they have failed to discharge their duties in this regard, which has become the cause of death of the deceased.

3) It was averred in the plaint that the deceased was aged 43 years of age at the time of his death. He was working as an agriculturist and was also running a dairy unit. The monthly income of the deceased was pleaded as Rs. 8000/-. In all, compensation in the amount of Rs. 5.00 lacs was claimed by the plaintiffs from the defendants.

4) The appellants/defendants contested the suit by filing their written statement. In their written statement, the defendants expressed their ignorance about the accident and consequent death of the deceased. However, they admitted that on 04.01.2007, one HT pole of 11 KV line got broken from the top about three feet below and tilted on one side. It was also pleaded that the conductor of the pole came in contact with the guard netting but the conductor was never snapped. It was contended that the guard netting was at sufficient height from the ground and could not come in contact with any object or human life. Thus, according to the defendants, the deceased could not have died by coming into contact with falling wire. The defendants denied their negligence but admitted that the electricity was restored at about 5.30 p.m after undertaking necessary repairs. The defendants have also submitted that an FIR came to be registered about the incident, which is subject matter of the suit. It is also pleaded that the deceased may have got electrocuted due to his own misadventure and it is impossible that he would have come in contact with live 11 KV wire.

5) From the pleadings of the parties, the following issues came to be framed:

"1. Whether Mohinder Singh deceased while grazing cattle come in grip of electric wire due to careless and negligent manner due to installation of wire by defendants? OPP

2. Whether defendants were duty bound to maintain-check the electric wires of all lines? OPP

3. Whether Mohinder Singh deceased being agriculturist used to earn Rs. 8000/- per month and plaintiffs are his legal heirs/OPP

4. Whether defendants are liable to pay compensation to the plaintiffs amount to Rs. 5.00/- ? OPP

5. Whether defendants were not negligent in installation of wires of electricity? OPD

6. Relief."

6) In order to prove their case, the plaintiffs examined plaintiff No. 1, Nirmala Devi, and PWs Prem Singh, Shadi Lal, Shiv Dev Singh and Dr. Mukul Ubot as witnesses in support of their case. As against this, the defendants examined DWs Jagjeet Singh, Rajinder Kumar and Yash Paul as witnesses in support of their

case.

7) After appreciating the evidence on record, the learned trial court came to the conclusion that deceased Mohinder Singh had died due to electrocution and the accident was caused due to carelessness and negligence on the part of the defendants. Regarding issue No. 2, it was concluded by the learned trial court that it was the duty of the defendants to maintain the electric lines and wires and keep a check thereon. The learned trial court while assessing the compensation observed that the monthly income of the deceased was Rs. 8,000/- and his age at time of his death was 45 years, whereafter the learned trial court proceeded to assess the compensation in favour of the plaintiffs in the amount of Rs. 5.00 lacs.

8) The appellants have challenged the impugned judgment and decree passed by the learned trial court on the ground that the same is against the facts and law. It has been contended that the death of the deceased did not occur due to negligence or careless on the part of the appellant-department. It has also been contended that the trial court has disbelieved the statements of the witnesses produced by the defendants without assigning any reason. It has been further contended that the evidence produced by the plaintiffs relating to the occurrence was hear-say in nature and, as such, legally inadmissible.

9) I have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment/decreed and the trial court record.

10) The points for determination, which arise in the instant appeal, are formulated as under:

1) Whether the death of deceased Mohinder Singh took place due to electrocution ?

2) Whether the death of the deceased is attributable to the negligence and carelessness on the parts of appellant-department?

11) So far as the first point is concerned, there is no dispute to the fact that death of the deceased has taken place due to electrocution. Plaintiff, Nirmala Devi and all her witnesses have stated in one voice that deceased Mohinder Singh had died as a result of electrocution when on 04.01.2007 he had gone out to graze his cattle at Mehtabpur Khad, where he came in contact with 11KV electric wire. PW Shiv Dev Singh, the Investigating Officer of FIR No. 01 of 2007 for offence under Section 304-A/201 RPC that was registered in respect of the occurrence, has categorically stated that as per his investigation, the deceased had died as a result of electrocution. He has further stated that as per the opinion of the Doctor given in the post-mortem report, the deceased had died due to electric shock. PW Dr. Mukul Ubot has stated that he had conducted the post-mortem upon the dead body of the deceased, who had received electric shock as per the history narrated to him by the Police. According to him, the death of the deceased was caused due to electric shock. No evidence to the

contrary has been brought on record by the defendants. Therefore, it can safely be stated that the deceased had died as a result of electric shock, which he received due to electrocution after having come in contact with the line electric wire.

12) So far as the second point is concerned, according to the appellants, they had taken proper care to maintain the electric lines and as per the evidence produced by them before the trial court, there was some disruption in electric supply and the same was repaired and the supply was restored. It has been further contended that there is evidence on record that the appellant-department had installed guard netting to rule out the possibility of human or animal coming in contact with the live wires.

13) If we have a look at the evidence on record including the evidence led by the defendants before the learned trial court, one thing clearly emerges that at the spot of the accident, one electric pole was broken three feet from its top side, which was later on repaired. All the witnesses produced by the plaintiffs have in one voice stated that breaking down of the electric pole resulted in falling down of the wire with which the deceased came in contact, got electrocuted and died on spot. Though, DW Rajinder Kumar has stated that guard netting below the broken electric pole was in its position, yet Investigating Officer, PW Shiv Dev Singh, who is an independent witness, has stated in his cross-examination that though there was fixation of guard netting on spot, but it was touching the ground. Therefore, there is ample evidence on record of the trial court to show that due to breaking of the pole, the live electric wire had touched the ground with which the deceased came in contact.

14) Now, the question that arises for consideration is whether any negligence can be attributed to the appellant-department in respect of breakage of electric pole and consequent falling down of the live electric wire. In this regard, it is to be noted that it is the duty of officers/officials of the Power Development Department to regularly check all electric connections, particularly vital installations, high tension wires and transformers. It is their statutory duty to ensure that no mishap takes place on account of lack of proper maintenance of these installations. Therefore, the fact that the electric pole had broken which resulted in falling down of live wire on ground, clearly demonstrates that there was no regular supervision of electric installations on the part of appellant-department, which was their statutory duty.

15) The Supreme Court has, in the case of M. P. Electricity Board v. Shail Kumari and Others, AIR 2002 SC 551, while dealing with a similar situation, observed as under:-

"It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the

supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps."

16) From the analysis of the law laid down by the Supreme Court in the aforesaid judgment, it is clear that authorities manning dangerous commodity like electricity current have extra duty to take all measures to prevent any mishap. High voltage electric current passing through transmission lines invariably pass above agricultural and other cultivable/uncultivable lands. If the authorities of the respondent Department are allowed to wash off their hands from a case where some mishap has taken place due to the falling of transmission line on the fields where people are working, it will have dangerous consequences and no one would allow the transmission lines to pass over his/her fields. It is, thus, bounden duty of the officers/officials of the Power Development Department to manage prevent and check the transmission lines from falling down by installing necessary devices and keep regular check on the same, which in the instant case they have failed to do. Thus, negligence of the officers/officials of the Power Development Department is writ large in the instant case.

17) Thus, it is clear that appellant-department and its officers/officials were negligent in performance of their duties, which resulted in fatal injuries to the deceased. It is, therefore, established that the death of the deceased had taken place due to sheer negligence of the appellants. No fault can be found with the findings recorded by the learned trial court in this regard.

18) So far as the quantum of compensation awarded by the learned trial court is concerned, the same is not under challenge in this appeal. Therefore, there is no need to go into the said aspect of the matter.

19) For what has been discussed hereinabove, I do not find any ground to interfere with the judgment and decree passed by the trial court. The appeal being without any merit is dismissed.