
(2011) 05 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : CIA No. 31 of 2007

State of Jammu & Kashmir and Others	APPELLANT
Vs	
Seema Jamwal and Others	RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2011) 2 JKJ 134

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—The facts leading to the filing of this Civil 1st Appeal, directed against Decree and judgment dated 20.08.2007 of the learned

Additional District Judge, Jammu, whereby Respondents' Suit No. 35/Civil was decreed for Rs. 5,40,000/- along with interest @ 7% per annum

against the Appellants, are as follows:

Nirmal Singh Jamwal, a Junior Assistant in the Medical College, Jammu, was electrocuted on January 16, 1996, when he attempted to switch off

the fan, which was already on the switch off mode, had abruptly started moving on its own grounds.

The functionaries of the Electric Department of the State Government are stated to have failed in their duty to take requisite care and caution that

the 11 KV electric current coming to their Stations did not pass in the residential area, as a result whereof, Nirmal Singh got electrocuted while

attempting to switch off the fan in his house where because of the negligence of the Electric Department, the Electric Current of 11 KV had been

allowed to pass.

Smt. Seema Jamwal, aged 29 years, his wife, Mehak Jamwal, aged 5 years, his daughter and Rahain Jamwal, aged 3 years, his minor son, filed a

Suit against the State and its Commissioner/Secretary in the Power Development Department, besides the Managing Director of REC Limited

Samba, the Society which was managing the State Controlled Electricity in the area, for recovery of Rs. 10 lac as compensation for the death of

Nirmal Singh, who was drawing Rs. 3000/- as his monthly salary at the time of the death.

2. The Suit was contested by the Appellants on various Out of the pleadings of the parties, the trial Court framed issues, which are reproduced

hereunder for reference:

1. Whether as a result of electric shock on 16.1.1996 because of the negligence and mismanagement of the Defendants, the death of Nirmal Singh

was caused? O.P. Plaintiffs.

2. In case issue No. 1 succeeds, whether the Defendants are liable to pay damages to the Plaintiff? If so, what is the quantum of damages? O.P.

Plaintiffs.

3. Whether the Suit against Defendant No. 3 is not maintainable? if so, why? O.P. Defendant No. 3.

4. At least to what relief the Plaintiffs are entitled? O.P.P

4. The Respondents examined Seema Jamwal, Gurdeep Singh, Pardeep Singh, Ranjit Singh, besides H.S. Gupta, S.E, Inspector Circle Jammu &

Kashmir, Gandhi Nagar, Jammu, to support their claim in the Suit.

5. The Appellants, on the other hand, produced Nobat Ram and Kaka Ram as their witnesses.

6. After appreciating the evidence led by the parties, the trial Court came to the conclusion that the Appellants were negligent in the discharge of

their duty, in that, they had failed to take requisite measures to ensure that the voltage of electric energy supplied to the area where the deceased's

house was located did not exceed the maximum prescribed voltage for the residential area.

7. On the basis of the evidence produced by the parties, Issue Nos. 1 & 2 were decided against the Appellants and in favour of the Respondents.

8. While deciding Issue Nos. 3 & 4 against the Appellants, they were held liable to pay Rs. 5,40,000/- as compensation to the Respondents for the death of Nirmal Singh Jamwal.

9. At the time of hearing of the Appeal, the Appellants' learned Counsel did not contest the findings of the trial Court on Issue Nos. 1 to 3, and

rightly so because in view of the evidence led even by the Appellants, it was established that the State-Respondents had not taken requisite care

and caution to see that high voltage of energy did not escape to the area where the house of the deceased was situated.

10. Learned Counsel, however, vehemently argued that the trial Court had erred in allowing Rs. 5,40,000/- as compensation to the Respondents,

which according to him, was a bonanza and hence impermissible, in that, only just compensation could be awarded to the Respondents for the

death of Nirmal Singh Jamwal, who was electrocuted while coming in contact with the electric switch in his house where the Appellants had

permitted high voltage of electric energy to pass.

11. Learned Counsel for the Respondents, on the other hand, submitted that the compensation awarded to the Respondents was not in the nature

of any bonanza and was rather less than the one to which the Respondents were entitled. He submitted that the Decree of the trial Court did not

warrant any interference in the Appeal, in the facts and circumstances of the case.

12. I have heard learned Counsel for the parties and considered their submissions in the light of the evidence brought on the records.

13. The facts pleaded and proved by the Respondents regarding the income of the deceased at the time of his death are not disputed. It is also not

disputed that the Respondents were the dependants of the deceased whose age was 37 years at the time of the electrocution.

14. While applying the multiplier method for assessing compensation, the trial Court has taken the average monthly income of the deceased at Rs.

5000/-, taking into account the prospective increase in his income had he survived.

15. Dividing the family into units, the monthly dependency of the Respondents on the income of the deceased has been taken at Rs. 3000/- and

adopting 15 as the multiplier as against 17 prescribed under the Second

Schedule in terms of Section 163-A of the Motor Vehicleless Act, for the age group of persons like the deceased, the total compensation has been worked out at Rs. 5,40,000/-.

16. In view of the admitted facts that the deceased was 37 years of age and had left behind a young widow of 29 years and minors in the age group of 3 to 5 years, looked from any angle, the compensation awarded to the Respondents cannot be said to be a bonanza, as argued by the Appellants' learned Counsel.

17. As a matter of fact, the compensation awarded to the Respondents by the trial Court appears to be on the lower side, in that, seized of the Suit seeking compensation for death by electrocution, the trial Court was required to assess the compensation on the basis of actual loss suffered by the dependant family of the deceased uninfluenced by the Second Schedule issued u/s 163-A of the Motor Vehicleless Act, 1988, which was a guiding factor only in cases arising out of the Motor Vehicular Accident cases for determination of just compensation.

18. The compensation was, therefore, required to be assessed taking into consideration the actual loss suffered by the family of the deceased which would include both liquidated and unliquidated damages.

19. The trial Court has not awarded any amount to the family of the deceased for loss of consortium to the widow and for loss of love and affection to the children.

20. Be that as it may, as the Respondents have not come up in Cross Appeal, so any further discussion on the question of Respondents' entitlement to higher amount of compensation may not be warranted.

21. Therefore, taking into consideration the facts and circumstances of the case and the law laid-down by Hon'ble Supreme Court of India in Smt.

Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ¹ do not find any error in the judgment of the trial Court and its findings

on the average income of the deceased and the dependency of the Respondents thereon, in that, even if 1/3rd of the average income of the

deceased had to be deducted to determine the dependency of the Respondents, the figure of dependency would be more than the one which has

been taken by the trial Court as the dependency of the Respondents on the income of the deceased.

22. For all what has been said above, I do not find any merit in the Appellants' learned Counsel's submission justifying modification of the findings

of the trial Court on Issue Nos. 3 & 4. The findings of the trial Court on these Issues is, therefore, affirmed.

23. Finding no merit in the Appeal, it is, accordingly, dismissed with costs quantified at Rs. 10,000/-.

24. The amount deposited by the Appellants in the Court be released in favour of the Respondents in the ratio indicated in the impugned Decree.

Registrar to draw Decree.