

(2023) 06 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : CFA No. 15 Of 2011, IA No. 18 Of 2011

State Of J&K & Ors

APPELLANT

Vs

Abdul Lateef Keen & Ors

RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Jammu and Kashmir Electricity Rules, 1978 — Rule 29
Code Of Civil Procedure, 1908 — Section 80
Jammu And Kashmir Electricity Act, 1997 — Section 33

Citation : (2023) 06 J&K CK 0033

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Amit Gupta, R Koul

Final Decision : Dismissed

Judgement

Javed Iqbal Wani, J

1. The instant appeal is directed against the judgment and decree dated 30.12.2010 passed by the Court of District Judge Kishtwar (for short "the trial Court") in case titled as "Abdul Lateef Keen and others vs State of J&K and others."

2. Facts emerging from the record would reveal that the respondents herein filed a suit under Order 33 CPC in "Forma Pauperis" and sought the following reliefs therein:

" it is therefore, humbly prayed that in view of submissions made above against others and Hon'ble Court may be pleased to grant leave the applicants to sue as an indigent persons and consequently this application be treated as suit and accordingly a decree for recovery of Rs.10,00,000/- along with interest @12% per annum both pendente lite and future, may kindly be passed in favour of the applicants (plaintiffs) and against the non-applicants (defendants) so as to advance the cause of substantial justice.

Any other relief in addition or alternative to above which this Hon'ble Court may deem proper and reasonable, may also be granted in favour of applicants(plaintiffs) and against the non-applicants(defendants) and do the justice."

3. The suit supra came to be instituted by the plaintiffs-respondents 1 to 4 herein initially along with one Zahid (minor) being son of respondent 3 herein and had died during the pendency of the suit on the premise that one Mohd. Ashraf Keen husband of respondent 3 herein, son of respondents 1 and 2 herein and father of respondent 4 herein was working as a Mechanic in HCC Railway Company, Banihal and during intervening night of 12th /13th April 2004 died on account of electrocution at his home village, namely, Patnazi, Bonzawa Kishtwar owing to the negligence of the field staff of the Electricity Department and since the said deceased was the only bread-earner of the family of the plaintiffs-respondents herein and the plaintiffs-respondents herein being dependent on his earnings lost the source of sustenance besides love and affection, inasmuch as, having suffered mental shock, agony and pain thereof stating further in the suit that the defendants-appellants herein became severely and jointly liable to pay damages/ compensation to the plaintiffs-respondents herein for the death caused to the deceased by their failure and negligence, inasmuch as, owing their failure to compensate the plaintiffs-respondents herein despite making a demand thereof under an in terms of a composite notice served by the plaintiffs-respondents herein upon the defendants-appellants herein under Section 80 CPC r/w Section 33 of the Jammu and Kashmir Electricity Act 1997.

4. The defendants-appellants herein, in response to the suit filed by the plaintiffs-respondents herein filed written statement to the same inter alia stating therein that the deceased died while fiddling with electricity system-service line denying any negligence on their part. The defendants-appellants herein further stated in the written statement that no electric wire had fallen on the ground at the time of incident and that the deceased infact was removing his service line from the system and had in the process suffered an electric shock and consequently died. The defendants-appellants herein further stated in the written statement that the amount of compensation claimed by the plaintiffs-respondents herein is much excessive and exorbitant and infact the plaintiffs-respondents herein are not entitled to any compensation to be payable by defendants- appellants herein as the plaintiffs have no cause of action against the defendants- appellants herein.

5. The trial Court on the pleadings of the parties framed the following issues on 01.08.2007:

1. Whether deceased Mohd. Ashraf Keen, the son of plaintiffs No. 1&2, husband of plaintiff No.3 and father of plaintiffs No. 4&5 expired on intervening night of 12th& 13th April 2004 due to electric shock as electric wire was falling on the ground due to the negligence of the defendants, which touched the deceased and he expired then and there? OPP

2. Whether deceased was serving as Mechanic in HCC Railway Company Banihal and was drawing good salary? OPP

3. Whether deceased Mohd Ashraf Keen was 22 years of age at the time of his death? OPP

4. To what amount plaintiffs are entitled to? OPP

5. Whether deceased expired due to his own negligence? OPD

6. Relief?

6. The plaintiffs-respondents herein subsequent to the framing of Issues led their evidence. Plaintiff No.1 besides examining himself as his own witness and for plaintiffs 2 to 5 examined PW-1 Mehraj Din, PW-2 Abdul Kabir and PW-3 Dr. Iftkhar Hussain, whereas the defendants upon closure of the evidence of the plaintiffs on 24.04.2009, in rebuttal produced DW-1 Rahil Dev Manhas AEE(PDD) and DW-2 Mohd Ramzan (Lineman in PDD), whereafter the evidence of the defendants was closed on 19.12.2009.

7. The trial Court upon considering the matter and evaluating and analyzing the evidence led by both the parties held the plaintiffs to have proved Issues 1 to 4, while holding that defendants-appellants herein failed to prove Issue No.5, onus whereof to prove the same had been put on defendants- appellants herein and consequently passed the impugned judgment and decree in favour of the plaintiffs-respondents herein for an amount of Rs.6.27 lacs along with simple interest @ 7% per annum from the date of filing of the suit, till the realization of the decretal amount. The trial Court while passing the judgment and decree in question further provided that the plaintiffs having been granted leave to file the suit as indigent persons shall pay requisite court fee of decretal amount under rules.

8. The appellants herein have questioned the impugned judgment and decree on the following grounds which are extracted and reproduced herein- under:

i) That the judgment and decree impugned is against law and facts as such merits to be set aside.

ii) That it was the positive case of the appellants before the court below that the death of the deceased had not occurred because of the negligence or carelessness attributable to the appellants but the deceased while putting down the service line of his house fiddled with the same which was carrying live electric current as such no liability can be fastened on the appellants which is amply proved during trial thus, the impugned judgment and decree as such merits to be set-aside on this ground alone.

iii) That minor discrepancies of ordinary nature in the statement of defence witnesses has resulted in disbelieving them, which has weighed much with the court below while passing the impugned judgment and decree as if trial court was appreciating prosecution evidence in criminal case. There was no occasion

for the court below to disbelieve the statement of defence witnesses which was based on official record but no proper appreciation of evidence in the case was made resulting in the decree under challenge which will not sustain under law.

iv) That there was no direct evidence by any of the witness so produced by the respondents before the court below to the effect that the deceased had died because of the negligence attributable to the appellants but the whole of the evidence produced by the respondents was revolving on hearsay which was legally inadmissible but has weighed much with the Court below and being legal impermissible could not prove any issue as such the impugned judgment and decree merits to be set aside.

v) That there was no legal occasion for the court below to believe the oral evidence of the respondent and disbelieve the evidence of the appellants which was based on the official record maintained in this behalf by the appellant's as such also impugned judgment is bad in law. The impugned judgment and decree is based on erroneous conclusion arrived at by the court below which in the facts and circumstances of the case merits to be set aside.

Heard learned counsel for the parties and perused the record.

9. Having regard to the facts and circumstances of the case, the pleadings of the parties and the evidence led in respect of the issues drawn and framed by the trial Court, the impugned judgment and decree will be adverted to hereunder:

10. Insofar as Issue No.1 is concerned, onus to prove whereof was put on the plaintiffs-respondents herein, it is an admitted fact that the plaintiff-1 appeared as his own witnesses besides on behalf of plaintiffs 2 to 5 before the trial Court stating in the witness box that his deceased son was working in HCC Railway Company at Banihal as Mechanic earning Rs.6,000/-per month and had been looking after the plaintiffs as they had no other source of income. Plaintiff-1 further stated in his statement that the deceased was of the age of 22 years and in the month of April 2004 had come to home for availing holidays and during intervening night of 12th/13th April 2004 went for attending call of nature outside his home in the fields and got in touch with a live electric wire lying on the ground and consequently suffered an electric shock, got burnt and died on spot and on coming out from his home, upon hearing the crying of the deceased saw the deceased lying on the ground on the wire having died on spot and that the people of mohalla gathered on spot and on the next day, the police came to be informed about the incident where-upon the police registered a case and also got the post-mortem of the body of the deceased done and that the deceased died on account of negligence and callousness of the employees of the Electric Department and that the police filed a case against the said negligent employees of the Electric Department and that on account of death of the deceased, the plaintiffs suffered heavy monetary loss besides mental agony and that the deceased was young and healthy and that the plaintiff-5 being son of the deceased died on account of ailment as the minor could not be treated owing to

the death of his father and that the defendants as such are liable to pay compensation to the plaintiffs as sought in the suit, as the defendants failed to pay any compensation to the plaintiffs despite issuance and service of notice by the plaintiffs.

During cross examination, the plaintiff-1 reiterated the statement made in the cross examination while elaborating the facts that one Churr Singh and Mohd Ramzan were the foreman and lineman of the Electric Department of the area and that none of the officers of the Electric Department came on spot and that the employees of the Electric Department were requested many a times to repair the electric line in which they failed and that the lineman never used to check the electric line in question.

The perusal of the statements of the plaintiffs witnesses, namely, Mehraj Din and Abdul Kabir would reveal that both the witnesses corroborated and endorsed the statement of the plaintiff-1 that the deceased had come in contact with live electric wire lying on the ground after the deceased had come out from his home for urination and upon coming in contact with the said live wire suffered electric shock and died on spot and that the deceased was of the age of 22 years at the time of his death and died on account of electric shock owing to the negligence and carelessness of the Electric Department and that the deceased was looking after the plaintiffs being the only source of income and had been earning monthly Rs.9000/- to 10,000/- and that the people of the village had repeatedly requested the employees of the Electric Department to repair the hanging electric wires. The perusal of the cross examination of the said witnesses would reveal that the said witnesses admitted the Mohd. Ramzan to be the lineman of the area and that the live wire was LT and that the deceased had come out of his house for urination as the plaintiffs had no bathroom in their house and that on the date of occurrence it had rained as also winds blown. The perusal of the said statements of the said witnesses of the plaintiffs would further demonstrate that the defendants have not been able to contradict the statements made by the said witnesses of the plaintiffs, during cross examination.

The issues being 1 to 4 onus to prove whereof had been put on the plaintiffs seemingly has been discharged by the plaintiffs satisfactorily by leading cogent and credible evidence.

Insofar as Issue No.5 is concerned, onus whereof to prove was put on the defendants-appellants herein, the evidence led by the defendants being DW-1 Rahil Dev Manhas AEE(PDD) and DW-2 Mohd. Ramzan (Lineman in PDD) would tend to show that the said witness though had stated that as per the record, the deceased was putting a hook on the live wire, resulting into the causing of accident and suffering an electric shock by the deceased resulting into his death, yet no such record came to be produced by the said witnesses or any other material supporting their contention that the deceased was putting a hook on the electric wire and consequently suffered an electric shock. During cross examination, the witness deposed that a police case came to be registered

against the linemen and another for having been careless and negligent and that no departmental enquiry was initiated against them and that in case any electric mishappens, the same is reported in the Division and that in terms of the Electric Rules, an electric line has to be about 18' to 20' from the ground level and that an electric pole has to be of 20' to 25' and that he did not know as to what was the height of the pole located at the site of the incident.

The perusal of the statement of DW-2 Mohd Ramzan would reveal that the said witness stated in the witness box that the deceased was known to him and that he was employed in a company at Banihal and that the deceased died in the intervening night of 12th /13th April 2004 and that he went on spot on 13th April and saw the electric wire was clinging with the deceased and that the deceased was not the electric consumer and that the incident had happened because of hooking and that the father of the deceased had been many a times asked to avail an electric connection. The perusal of the cross examination of the witness would reveal that the witness had deposed that the incident happened on account of the fault of the deceased. The said witness in cross examination has also admitted the deceased to have been an employee of the company at Banihal earning Rs.8,000/- to 10,000/- per month and providing sustenance to his family being the plaintiffs. The witness admitted that a police case was registered and challaned against him for being negligent and careless in the matter, as the police had during investigation observed that the wire was lying on the ground with which the deceased got in touch, suffered the electric shock and consequently died. The witness as well did not produce any material or proof to endorse his contention that the deceased suffered the electric shock while putting a hook on the wire in question nor did the witness discredited or got the evidence led by the plaintiffs discarded qua the incident in which the deceased died.

11. As noticed in the preceding paras, the defendants-appellants herein failed to prove Issue No.5 and in the process did not discharge the onus to prove that the deceased died due to his own negligence.

12. Keeping in mind the aforesaid facts and circumstances, inasmuch as, the evidence led by both the parties to the lis before the trial Court, it is established that the deceased died on account of electric shock suffered by him owing to the lying of live electric wire on ground during intervening night of 12th /13th April 2004, which electric wire otherwise was supposed to have been taken care of by the Electric Department-the appellants herein being their statutory duty under an in terms of the provisions of the Jammu and Kashmir Electricity Act of 1997 and the Jammu and Kashmir Electricity Rules of 1978. In this regard, a reference to Rule 29 of the Electricity Rules becomes imperative hereunder which is contained in Chapter-IV under the heading of General Safety Precautions:

"29. Construction, Installation, Protection, operation and maintenance of electric supply lines and apparatus

All electric supply lines and apparatus shall be sufficient in power and size and of sufficient mechanical strength for the work they may be required to do, and, so far as it is practicable, shall be constructed, installed, protected, worked and maintained in accordance with the standards of the Indian Standards Institution so as to prevent danger.”

Thus, an admitted position emerging from the aforesaid discussion is that the liability is cast upon the State, in law, under law of Torts to compensate the plaintiffs-respondents herein on account of negligence and carelessness. A reference in this regard to the judgment of the Apex Court passed in case titled as “MC Mehta Vs. Union of India reported in 1987 (1) SCC 395” would be relevant, wherein it has held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of the such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the acceptions to the principle of strict liability under the rule in Rylands Vs. Fletcher.

Having regard to the aforesaid position and the principle of law, it can safely be said that the trial Court has rightly held the defendants-appellants herein responsible for the death of the deceased owing to their negligence and carelessness entitling the plaintiffs-respondents herein to the compensation thereof and consequently has rightly fallen back upon the provisions of the Motor Vehicles Act 1988 for computing and working out such compensation placing reliance on the judgment of this Court passed in case titled as “Mushtaq Ahmad and others vs State of J&K and others, reported in AIR 2009 JK 29” and consequently correctly saddled the defendants-appellants herein with the liability to pay such compensation of Rs.6.27 lacs minus interim relief, if any, with simple interest @ 7% per annum from the date of filing of the suit till the realization of the decretal amount.

13. For what has been considered, observed and analyzed above, the impugned judgment and decree dated 30.12.2010 passed by the trial Court does not call for any interference. Resultantly, the appeal fails and is, accordingly, dismissed.

Registry to draw and frame a decree sheet accordingly.