
(2008) 03 GAU CK 0029
In the Gauhati High Court

State of Mizoram and Others

APPELLANT

Vs

H. Lalrinmawia

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2008) 2 GLT 32

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H. Barua, J.—This present appeal is preferred under Rule 18 of the Administration of Justice Rules, 1937 read with Section 100 of the CPC against the Judgment and Order dated 7.9.05 passed by the learned ADC, Aizawl District, Aizawl in C.S. No 6/02 and also the Appellant judgment and order dated 4.8.06 passed by the Id. ADM(J) in RFA No. 14/05.

2. Heard Mr. N. Sailo, learned Addli A.G for the State of Mizoram for the appellants and also heard Mr. S.N. Meitei, learned Counsel for the respondent.

3. A Cross Objection is also filed by Shri H. Lalrinmawia, father of the deceased, seeking enhancement of the award made by the First Appellate Court.

4. On filing of this appeal, the following substantial question of law was formulated after hearing both the parties which reads as under:- "whether the appellants can be held negligent for payment of compensation of electrocution of the plaintiff's son due to fluctuation of electric current".

5. Before entering into the merit of this appeal and answering the question so involved, it would be appropriate for this Court to make a survey of the case of the plaintiff, respondent herein. Deceased Lalfakawma was the son of the sole respondent namely H. Lalrinmawia. On 19.1.02, the deceased Lalfakawma had been to the house of his maternal grand parent. At about 3 PM he got

electrocuted while leaning against the window. He was immediately taken to Hospital but he succumbed to his injuries so received. The respondent therefore, on the death of his son filed a suit before the Assistant to the Deputy Commissioner, Aizawl, claiming compensation for Rs. 7,27,000/- from the defendants, appellants herein on the ground that his son died due to negligence on the part of the defendants/appellants in maintaining the Transformer. Learned Assistant to the Deputy Commissioner on the pleadings of both the parties framed issues and received evidence from the plaintiff and defendants as well and at the conclusion of the trial awarded compensation for Rs. 3,50,000/- to the plaintiff-respondent.

6. Being aggrieved by the judgment and decree, the State appellants herein filed an appeal before the learned. ADM (J). The learned ADM(J), after hearing the learned Counsel of both parties had partly allowed the appeal and awarded compensation of Rs. 1,50,000/- Being aggrieved thereby, this present appeal has been preferred.

7. There is no dispute as to the death of the son of the respondent on 19.1.02 at about 3 PM in the house of his maternal grand father due to electrocution. The sole question to be decided in this appeal is whether the appellant authorities can be saddled with the burden of paying compensation on account of the death of the son of the respondent due to electrocution. Mr. N. Sailo, learned Addl. A.G for the appellants strenuously argued that there is no evidence on record to show that electrocution was due to negligence and fault on the part of the Power & Electricity Department. The accident occurred in the house of the maternal grand father of the deceased while the deceased was standing near the window.

8. It is argued by Mr. N. Sailo that the deceased negligently touched the naked wire over the window frame and accordingly electrocuted. It is argued by him that the appellant authorities therefore cannot be held liable for the wrong caused by the deceased himself. It is also argued by him that the evidence do not reveal that prior to the accident there was some complaint regarding malfunctioning of the transformer.

9. Per contra to the submission Mr. S.N. Meitei, learned Counsel for the respondent and the Cross Objector submits that it is the duty of the State appellants to maintain all Transformers and other electrical goods in proper way used for the purpose of providing electricity to the consumers and any negligence on the part of the department concerned, the department will be liable for any accident. Mr. S.N. Meitei leading this Court through the evidence on record and the judgments rendered by the trial court and the first appellate court submitted that in regard to the fact of malfunctioning of the Transformer which is situated nearby the house of the maternal grand father where the accident occurred and negligence on the part of the appellants, both the courts below arrived at a concurrent finding that the accident occurred due to negligence on the part of the department concerned in maintaining the transformer.

10. From the evidence on record, it is found that at about 3 PM there was heavy fluctuation of electric current at Sihphir Vengthar and there was a sound of explosion and electric supply line were shaking and the Transformer got fired. The said incident had resulted damages of Televisions, Refrigerators etc. There is also evidence on record to show that Young Mizo Association, in short YMA also lodged complaints to the appropriate authority regarding malfunctioning of the said Transformer. This aspect together with the evidence on record makes it clear that despite complaints made, the appropriate authority did not take any action for correction of the defects in the said Transformer. This aspect of the matter clearly shows that the Transformer which exploded on the relevant date was catering some defects from long before and the defects were not rectified and allowed to subsist by the department.

11 Mr. S.N. Meitei, learned Counsel for the respondent herein and the Cross Objector as well in support of his contention relied on a decision in the case of H.S.E.B and Ors. v. Ram Nath and Ors. Here in this appeal, we have also found that the fluctuation of current occurred due to fault in the Transformer or in other words for malfunctioning of the same for which the accident occurred inside the house of the maternal grand father which resulted damages of Televisions, Refrigerators etc and death of the deceased.

12. This court, therefore, having considered the facts and circumstances of the case and the evidence on record is of the view that compensation can be awarded to the respondent for death of the deceased by electrocution which happened as a result of negligence on the part of the concerned department even if the same was caused inside the residence. The claim of the respondent is that death occurred to his son due to negligence on the part of the appellant authorities for not maintaining the Transformer in a proper way. The objection raised by Mr. N. Sailo, learned Addl. A.G. for the appellants, in view of the findings of the learned courts below is not sustainable. The learned Trial court awarded compensation of Rs. 3,50,000/- and the same was reduced to Rs. 1,50,000/- by the First Appellant Court. The amount of compensation so awarded by the First appellate court appears to be reasonable. This court further does not see any ground to accept the contention of the respondent for enhancement of the award.

13. Mr. N. Sailo also informs that at the time of admission, the appellants deposited 50% of the award with the Registry as a condition for stay of the impugned judgment and award. The respondent will be at liberty to withdraw the same from the Registry. Registry will release the amount on proper identification.

14. The remaining 50% of the award shall be paid by the appellant authorities within two months from the date of receipt of this order along with interest at the rate of 6% per annum on the whole award. The interest shall be calculated from the date of judgment of the first appellate court.

15. In the result, this second appeal as well as the Cross Objection filed by the

respondent are dismissed. No cost.