
(2009) 05 GAU CK 0007
In the Gauhati High Court
Case No : Regular First Appeal No. 08 of 2008

State of Mizoram and Others	Vs	APPELLANT
Master Laldinpuia (through his father)		RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 1, Order 12 Rule 2, 96
Electricity Rules, 1956 — Rule 35
Mizoram Civil Courts Act, 2005 — Section 17(2)

Citation : (2009) 2 GLD 359

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : N. Sailo, AAG, for the Appellant; C. Lalramzaua and A.R. Malhotra, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. N. Sailo, learned Additional A.G., appearing on behalf of the appellants and Mr. A.R. Malhotra, learned Counsel appearing for the respondent.

2. This is an appeal preferred u/s 17(2)(b) of Mizoram Civil Court Act, 2005, read with Section 96 and Order XII, Rules 1 and 2 of Code of Civil Procedure, 1908, against Judgment and Decree dated 15.7.2008, passed by Senior Civil Judge, Aizawl District, Aizawl, in Money Suit No. 05/2004, awarding compensation to the tune of Rs. 14,35,000/- with pendentelite interest @ 6% per annum to the plaintiff (respondent herein) for the injuries suffered by him within a period of two months due to burn by live electric current from the transformer.

3. The material facts which have given rise to this case is that on 8.11.2003 when Master Laldinpuia, a boy aged about 7 years, was playing football in the Tennis Court near Saikuti Hall at Lunglei, one of the boys kicked the football into the enclosure where the defendant Electricity Department installed an electric transformer without any proper fencing, as a safety measure around the said transformer. The boy aforementioned ran into the said enclosure to retrieve the

football and he was burnt by the live electric current from the said transformer. The boy fell down unconscious and was evacuated to the Civil Hospital at Lunglei where he was admitted and treated w.e.f. 8.11.2003 to 4.12.2003. The boy suffered grievous injuries to both his arms and legs and on 15.11.2003, both his arms were amputated. The Medical Board, Lunglei District, issued a medical certificate dated 4.2.2004 certifying that the boy has suffered 100% disability. The Lunglei police registered a case and investigated into the facts of accident. An inquiry report dated 27.11.2003 was submitted by the police. The victim, being minor, filed a Money Suit Case No. 05/2004 through his father Sh. J. Vaninmawia in the Court of Addl. DC/ADM(J), Aizawl, claiming compensation to the tune of Rs. 48,00,000/- with pendentelite interest @ 12% per annum from the defendants on the Heads of Pecuniary and non-pecuniary damages, the break-up of which is furnished below:

A. Pecuniary Damages:

(a) Loss of earning capacity Rs. 5,00,000/- (b) Medical, Hospital and Nursing Expenses Rs. 5,00,000/- (c) Loss of matrimonial prospect Rs. 5,00,000/- (d) Special diet Rs. 3,00,000/-

B. Non-pecuniary Damages:

(a) Loss of expectation of life Rs. 5,00,000/- (b) Loss of amenities of life Rs. 5,00,000/- (c) Impairment of physio- logical functions Rs. 5,00,000/- (d) Impairment of anato- mical structures Rs. 5,00,000/- (e) Pain and suffering Rs. 5,00,000/- (f) Mental suffering Rs. 5,00,000/- Total Rs. 48,00,000/-

4. The suit was contested by the defendant authorities by filing written statement wherein, apart from raising some preliminary objections, denied that the transformer was not properly fenced and there was negligence on the part of the defendants. It was further contended that the victim by himself was guilty of negligence. Based on the pleadings of the parties, the learned trial Court framed as many as eight issues, which are, as under:

- (i) Whether the suit is maintainable in its present form and style?
- (ii) Whether there is any cause of action for the suit?
- (iii) Whether the suit is barred by limitation, doctrine of estoppel and acquiescence?
- (iv) Whether the suit is bad for nonjoinder/misjoinder of necessary parties?
- (v) Whether the suit has been properly valued for the purpose of Court fees?
- (vi) Whether the Court has territorial jurisdiction for adjudicating upon the present suit?
- (vii) Whether the accident resulting in the physical injury and permanent disability of the plaintiff was caused due to negligence on the part of the defendants?

(viii) Whether the plaintiff is entitled to any relief, if so, to what extent?

5. The plaintiff (instant respondent) adduced three witnesses including his father and the Medical Officer while the defendants adduced only one witness, namely, Sri Lalduhzula Sailo, Executive Engineer (Planning), P&E Department, under the Government of Mizoram. After hearing the parties, the learned trial Court decreed the suit in favour of the plaintiff (respondent) directing the appellant to pay compensation as stated earlier.

6. Although the appellants took as many as eight grounds for challenging the impugned judgment and Order, Mr. N. Sailo, learned Additional AG, representing the appellants emphasizes only on 2 (two) counts.

First of all, it is submitted that the accident took place due to the negligence of the victim boy who tried to retrieve the football entering inside the sub-station which was properly fenced with goat proof wire net and chained link wire mesh and provided with a hook on the same link mesh so as to provide closing and opening for entering inside the sub-station. The place where the victim boy and others played football on 8.11.2003 was the courtyard of Saikuti Hall, Lunglei, and not a Tennis Court or place for playing football. Since the accident took place due to negligence of the victim boy himself, the principle of strict liability would not be applicable to the present case.

Secondly, the learned trial Court committed grave error and illegality in completely relying upon the so-called police enquiry report which was conducted on 27.11.2003 i.e. after a gap of 19 days from the date of occurrence on 8.11.2003, and that too, without associating any representative of the appellant department. The police even did not inform the authorities/officials of the appellant department about holding of enquiry. The enquiry was made by the police behind the back of the appellant department and hence, the said police enquiry report was neither acceptable nor sustainable in the eye of law.

7. It is strenuously argued by Mr. Sailo, learned Additional AG, that the appellant authorities cannot be saddled with liability to indemnify or compensate the respondent under the principle of strict liability. The State may, however, have a duty to pay ex-gratia amount to the respondent for such unfortunate accident that took place due to his own negligence. In the alternative, it is submitted by Mr. Sailo, learned Additional AG, that even if the appellants are found to be negligent and the incident took place due to their negligence, the learned trial Court, has calculated the compensation amount without basing it on any accepted principle for calculation of compensation amount in such cases. The learned trial Court wrongly applied the principle of strict liability enunciated by the Apex Court in the case of *Madhya Pradesh Electricity Board Vs. Shail Kumari and Others*, and the principle of deciding the quantum of compensation as rendered in the case of *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, According to Mr. Sailo, learned Addl. AG, the trial Court may assess the compensation on 2 (two) heads, namely, pecuniary and non-pecuniary damages

separately but in the present case, the learned trial Court failed to apply the principle laid down in the aforesaid case of R.D. Hattangadi (supra) inasmuch as the amount of compensation under the head-pecuniary charges are not on the basis of expenses actually incurred by the respondent and similarly, the assessment of compensation under non-pecuniary charges has been made on guess-work inasmuch as the damages on account of loss of expectancy of life, loss of amenities of life, impairment of anatomical structures, pain and suffering, and mental suffering have been assessed at Rs. 1,50,000/- uniformly which comes to Rs. 1435,000/- in total. It is further submitted by Mr. Sailo that the learned trial Court may assess the damages under pecuniary and non-pecuniary heads as per the provisions made under the Motor Vehicles Act, and the multiplier provided under Schedule-II to the said Act. Had such calculation been made as per the provision under Schedule-II of the aforesaid Act, the compensation amount would have been much lesser than what the learned trial Court has calculated at and it would have been more justified and acceptable to the appellants. In this regard, learned Addl. AG, relies on and cites the cases of : (1). Lata Wadhwa and Ors. v. State of Bihar and Ors. reported in 2002 (1) TAC 138 (SC), where Rs. 4.10 lakhs only was awarded to claimants of deceased children (2). K.G. Srinivasa Murthy v. Habib Khatun reported in 2002 ACG 557; where Rs. 3,50,000/- only was awarded to the victim girl aged 3 years who suffered 80% permanent disability, and (3). United India Insurance Co. Ltd. v. Ajith and Ors. reported in 2003 (3) TAC 683 (Ker), where Rs. 1,18,000/- only was awarded as compensation for the death of a girl aged 4 years.

8. Mr. Sailo, learned Additional AG, further submits that the Court may award compensation on pecuniary and non-pecuniary heads but for arriving at a particular calculation on each of the aforesaid heads, the claimant is bound to produce relevant materials for determination of the damages. In the instant case, the claimant/respondent claimed compensation to the tune of Rs. 48,00,000/- alongwith pendentelite interest @ 12% per annum on various sub-heads under the pecuniary and non-pecuniary damages and the learned trial Court awarded compensation, particularly, under the "Head : Non-pecuniary damages" as follows:

Non-pecuniary Damages:

(a) Loss of expectation of life Rs. 1,50,000/- (b) Loss of amenities of life Rs. 1,50,000/- (c) Impairment of physio- logical functions Rs. 1,50,000/- (d) Impairment of anato- mical structures Rs. 1,50,000/- (e) Pain and suffering Rs. 1,50,000/- (f) Mental suffering Rs. 1,50,000/-

On each of the sub-heads, the learned trial Court has awarded Rs. 1,50,000/- in an uniform manner without any basis. In the sub-heads, namely, "loss of matrimonial prospect" and "special diet" under the Head : Pecuniary damages, the learned trial Court has also fixed compensation at Rs. 1,50,000/-each, without any basis.

9. Mr. Malhotra, learned Counsel for the respondent submits that the facts and circumstances of the case, clearly established that the appellants are attributable to negligence based on the evidence of DW 1, namely, Sri Lalduhzuala Sailo, who was holding the post of Executive Engineer (Power Maintenance Division No. 1), during the period 2001-2006. The learned Counsel draws the attention of this Court to certain relevant portion of the deposition of DW 1, which are quoted hereinbelow:

.... It is a fact that as per Exhibit-1, it can be seen that there is an opening without any fencing in the said sub-station.

It is a fact that there was no "danger-sign"/notice around the sub-section where transformer was located at the time of the accident which is mandatory as per Rule 35 of the Indian Electricity Rules, 1956.

10. The fact that there was an opening without any fencing erected and without any "danger-sign/notice" around the said sub-station are enough to show that the appellants were negligence and thereby, they are liable to compensate the respondent victim boy under principle of strict liability. The learned Counsel for the respondent also draws the attention of this Court to the examination-in-chief on affidavit filed by Dr. P.C. Lalliannghaka, who was posted at Civil Hospital, Lunglei, as Medical Officer, during the period 1999-2004 and treated the respondent, wherein averments have been made to the effect that both shoulders of the victim boy have been disarticulated and became physically handicapped for the rest of his life and he would not be able to perform the functions like washing his face, eating, etc., whatever a normal person could do and he would need an attendant for the rest of his life. According to the said doctor, there is no chance of improving his condition or any chance for using artificial limbs at any stage of his life. The learned trial Court, according to Mr. Malhotra, learned Counsel, rightly saddled the appellants with the liability to compensate the respondent victim boy and it has rightly calculated the compensation amount, which needs no interference and/or reduction.

11. I have carefully gone through the records of the Court below and the evidence recorded by the learned trial Court. The accident and the injuries/disability suffered by the respondent are admitted facts. The nature of injury i.e. 100% permanent disability caused to the victim boy has also remained as an indisputable fact. What is disputed by the appellants is that the victim boy was negligent himself due to which the accident took place and he sustained injuries and for that the appellants could not be saddled with liability for compensation applying the principle of strict liability. This Court is confronted with the basic question as to whether on the facts and circumstances of the present case, the principle of strict liability would apply or not. As regards the principle of strict liability, the Apex Court elaborately dealt with the aforesaid principle in Shail Kumari's case (supra) by referring to various leading cases, right from its origin in English law as profounded in *Raylands v. Fletcher* (All ER p. 7E-F) and other decisions rendered by the Supreme Court. The said principle of strict liability has

been aptly explained in paragraphs of Shail Kumari's case (supra), which is quoted hereinbelow:

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other persons-respective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

12. There is no denying the fact that the appellant authorities have been undertaking an activity involving the hazardous and risky exposure of human life and they failed to put up the "danger-sign/notice" around the said sub-station, as required under the Indian Electricity Rules, 1956 and there was an opening without any fencing around the said sub-station. These facts are admitted by DW1 (Executive Engineer concerned), as discussed earlier, and as such, the appellants cannot shy away from the allegation of negligence and liability to compensate the victim boy who has suffered 100% permanent disability due to such negligence on the part of the department. Considered in the light of the aforesaid judgment pronounced by the Apex Court, there would not be any doubt that the principle of strict liability would be applicable to the present case and the appellants are negligent in providing the statutory warning and safety measures for which the appellants are liable to compensate the victim boy.

13. The next question obviously is calculation of compensation amount and whether the calculation made by the learned trial Court is reasonable and justified.

14. Let me now examine the compensation awarded under the pecuniary damages. Before doing so, it must be borne in mind that the Apex Court in Hattangadi's case (supra) has already explained the pecuniary and non-pecuniary damages. The pecuniary damages as those which the victim has actually incurred and which are capable of being calculated in terms of money. The pecuniary damages may include expenses incurred by the claimant like-(i) Medical attendance; (ii) Loss of earning of profit up to the date of trial; and (iii) other material loss. The learned trial Court, in the present case, awarded compensation to the victim for loss of earning capacity as per the Second Schedule to (c) 163-A of the Motor Vehicles Act, 1988, to the tune of Rs. 15,000/- x 15 which comes to Rs. 2,25,000/-. Whether this award of Rs.

2,25,000/- on count of "loss of earning capacity" is reasonable and justified could be determined referring to the following cases:

(1) In the case of Gujarat State Road Transport Corporation and Anr. v. Minor Prakash Maganbhai Padhiyar reported in 2003 (3) TAC (Guj), a brilliant student of aged 8 years, studying in 3rd standard met with an accident due to which his left leg was amputated below the knee in the first operation and above the knee in the second operation. A Division Bench of Gujarat High Court calculated the monthly income of the aforesaid victim boy at Rs. 400/- which was multiplied by 20, came to Rs. 96,000/- plus Rs. 40,000/- towards "pain, shock and suffering". The total compensation awarded was Rs. 1,53,750/-.

(2) In the case of Manju Vs. Mahavir Prasad Jain and Others, a girl of 5 years was hit by a truck due to negligent driving of the driver and her right leg was crushed resulting in amputation below the knee. In that case, a claim of Rs. 9,69,000/- was made against which, the MAC Tribunal awarded Rs. 83,100/-only (Rs. 75,000/- for pain and suffering and Rs. 8,100/- on other counts), which the Jaipur Bench of Rajasthan High Court, in an appeal, enhanced the compensation award to the tune of Rs. 5,00,000/-with an interest @ 12% per annum.

(3) In another case of K.G. Srinivasamurthy Vs. Habib Khathun and Others, a girl of 3 years old was dashed by a lorry driven in a rash and negligent manner resulting in amputation of her right leg above the knee. In that case, the Tribunal awarded Rs. 1,80,000/- for loss of income, Rs. 25,000/- for loss of amenities, Rs. 50,000/- for loss of marriage prospect, Rs. 20,000/- for medical expenses, Rs. 10,000/- for artificial limb, which came to Rs. 3,10,000/-in total. The High Court of Karnataka raised the award under "injury, pain and suffering" to Rs. 50,000/- and loss of amenities and marriage prospect to Rs. 90,000/-and thus, the total award was raised from Rs. 3,10,000/- to Rs. 3,50,000/-. The compensation on "loss of income" calculated by the Tribunal at Rs. 1,80,000/- was not enhanced in the aforesaid case.

(4) Similarly, in the case of Javid Vs. Lalji Yadav and Others, a boy of 5 years old was hit by a mini bus resulting in amputation of his left leg from the knee. The boy suffered permanent disability in his childhood. The Tribunal awarded him Rs. 1,00,000/-only for "pain and suffering" and Rs. 12,000/- on other counts, the total compensation award being Rs. 1,12,000/- only. In the appeal, the compensation amount was enhanced to Rs. 5,00,000/- as non-pecuniary compensation for Toss of amenities of life, discomfort, disappointment, frustration and mental distress in life.

In my considered view, in the present case, the learned trial Court has rightly calculated the income at Rs. 15,000/- per annum in view of the fact that the respondent claimant was aged only 7 years and he was not earning any amount at the time of accident. The learned trial Court also applied the right multiplier and as such, the award of Rs. 2,25,000/- on account of "loss of earning capacity" is just and proper. The award on account of "loss of matrimonial prospect" and

"special diet" is found to be on the higher side and the same are required to be reduced to Rs. 1,00,000/- each. Thus, the compensation of Rs. 4,35,000/- under pecuniary charges can be awarded to the respondent victim boy.

15. The non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation. Thus, the non-pecuniary damages may include : (i) Damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) Damages to compensate for loss of amenities of life which may include a variety of matters like on account of injury, claimant may not be able to walk, run or sit; (iii) Damages for loss of expectation of life, i.e., on account of injury, the normal longevity of the person concerned is shortened; (iv) Inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

16. In the instant case, the learned trial Court awarded damages to the tune of Rs. 5,00,000/- each, on account of-(a) loss of expectation of life; (b) loss of amenities of life; (c) impairment of physiological functions; (d) impairment of anatomical structures; (e) pain and suffering; and (f) mental suffering. There is no denial of the fact that the claimant victim boy, due to amputation of both hands above the elbow, has become handicapped and he would not be able to work and live a normal life and he has lost the expectation and amenities of life apart from physical pain and mental suffering. No amount of compensation would be able to restore the physical frame of the victim boy and any compensation amount awarded in terms of money would not heal his physical and mental suffering. In other words, the compensation amount cannot equate the mental and physical suffering due to amputation of both his hands and thus, he has been deprived of all the amenities and happiness, life could offer him. The claimant victim boy, is, therefore, entitled to receive non-pecuniary damages but it is to be considered whether such damages to the tune of Rs. 1,50,000/- on each of the aforesaid counts is reasonable and justified. It is quite natural that in calculating the non-pecuniary damages, some guess work and hypothetical considerations may come into play and it appears that the learned trial Court did the same. This is probably the reason why the learned trial-Court could not give any reason for calculating the non-pecuniary damages at Rs. 1,50,000/- on each of the above counts. In various other similar cases, including the cited ones, the tribunals have not assessed the non-pecuniary damages at such higher side. I have at least, not come across any case where non-pecuniary damages have been awarded in an uniform manner at such higher rate as has been done in the instant case by the learned trial Court. It is only in the case of Manju (supra), the High Court of Rajasthan enhanced the award from Rs. 83,100/- to Rs. 5,00,000/-. The compensation amounts, awarded in other similar cases, are far less than Rs. 5,00,000/-. Considering the present price index of essential commodities and the cost of living, it would be justified and reasonable to award non-pecuniary damages to the tune of Rs. 5,00,000/- only to the respondent victim boy.

17. Thus, the respondent claimant would be entitled to a total compensation amount, both pecuniary and non-pecuniary damages, at Rs. 9,35,000/- (Rs. 4,35,000/- + Rs. 5,00,000/-). Hence, the total compensation amount of Rs. 14,35,000/- as was awarded by the learned trial Court vide impugned judgment and order dated 15.7.2008 stands reduced to Rs. 9,35,000/-only. The impugned judgment and order dated 15.7.2008 also, thus, stands modified to the extent indicated above and the State appellants are hereby directed to pay the compensation amount of Rs. 9,35,000/-(Rupees Nine Lakhs Thirty Five Thousand) only, to the respondent victim boy with pendentelite interest @ 6% per annum, as was ordered to be paid by the learned trial Court. The amount of compensation, aforementioned, shall be deposited by the respondent authorities by Cheque in the Court of Senior Civil Judge, Aizawl District, Aizawl, within a period of 2 (two) months from the date of this judgment and order. On receipt of the Cheque towards payment of the aforesaid compensation amount of Rs. 9,35,000/-, an amount of Rs. 8,35,000/- (Rupees Eight Lakhs Thirty Five Thousand) only, shall be deposited in any Nationalized Bank having its Branch at Aizawl, in the name of the respondent victim boy, for a fixed period of at least 10 years which may be extended to further period and the rest amount of Rs. 1,00,000/- (Rupees One Lakh) only, may be allowed to be drawn by the father of the respondent victim boy for his upkeep and maintenance. Liberty is also granted to the, father of the respondent victim boy to withdraw interest accruing on the said deposit from time to time.

18. The appeal stands allowed in part as indicated hereinabove. Parties to bear their respective costs.

19. Send down the LCRs to the concerned Court below forthwith.