

**(2012) 02 MAD CK 0013**

**In the Madras High Court**

**Case No : A.S. No's. 740 of 2002 and 191 of 2009**

Tamil Nadu Electricity Board, Periyar Electricity Distribution  
Circle and Others

**APPELLANT**

**Vs**

Kuppayammal and Others

**RESPONDENT**

**Date of Decision : 23-02-2012**

**Acts Referred:**

**Citation : (2013) ACJ 1914 : (2012) 3 TAC 786**

**Hon'ble Judges : G. Rajasuria, J**

**Bench : Single Bench**

**Advocate : V. Viswanathan TNEB and Mr. R.G. Narendhiran, for the Appellant; S. Ramesh Kumar and Shri R.G. Narendhiran, for the Respondent**

## **Judgement**

G. Rajasuria, J.—The defendant Nos. 1 to 3 in the suit filed the appeal in A.S. No. 740 of 2002 and D5 filed the appeal in A.S. No. 191 of

2009 as against the judgment and decree dated 26th April, 2002 passed by the learned Principal Subordinate Judge, Gobichettipalayam, in O.S.

No. 233 of 1999. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the Trial

Court.

2. Broadly but briefly, narratively but precisely, the relevant facts absolutely necessary and germane for the disposal of these two appeals would

run thus:

(a) The original plaintiffs three in number happened to be the mother, widow and unmarried sister respectively, of the deceased Marappan, who

died electrocution death on 16th May, 1994. The Electricity Board and its officials filed the written statement resisting the suit. The land owner in

which the death occurred also filed separate written statement resisting the suit.

(b) Whereupon the Trial Court framed the issues.

(c) During trial, the second plaintiff-Gomathi examined herself as P.W. 1 alongwith P.Ws. 2 to 4 and Exts. A1 to A9 were marked. On the side of

the defendants, one Arumugam was examined as D.W. 1 and Ext. B1 was marked.

(d) Ultimately, the Trial Court decreed the suit, awarding a compensation of Rs. 1,80,000/- with 9% interest per annum, in favour of the plaintiffs,

payable by the defendants jointly and severally.

3. Being aggrieved by and dissatisfied with the judgment and decree of the Trial Court, the Electricity Board and its officials preferred A.S. No.

740 of 2002 on various grounds. D5, son of deceased D4 (the land owner) filed separate appeal in A.S. No. 191 of 2009 impugning and

challenging the judgment and decree of the Trial Court.

4. A summation and summarisation of the relevant facts as stood exposted from the averments in the plaint would run thus:

The deceased Marappan at his age of 40 years, on 16th May, 1994 proceeded on foot across the coconut thope of D5, and came in contact with

a live fallen wire on the ground and owing to that he sustained electrocution death. The police registered the FIR on the next day consequent upon

the complaint lodged by the V.A.O. concerned. According to the plaintiffs, the deceased was earning a sum of Rs. 1,000/- per month at the

relevant time of his death and the plaintiffs happened to be his deponents. On the death of the only bread winner of the family, the plaintiffs were

left high and dry, in addition to they being helpless. Hence, they filed the suit seeking compensation as against the defendants.

5. Per contra, the Electricity Board and its officials would try to disown their liability on the ground that the land owner ought to have been careful

enough in maintaining the coconut trees properly and that the electric wire got snapped because of the falling of a dry coconut leaf which was left

uncut or pruned by the land owner.

6. The land owner would contend that the accident was not due to his negligence, but it was because of the negligence of the Electricity officials in

not maintaining the electric line properly.

7. The points for consideration are as under:

(1) Whether the Trial Court was justified in fixing the liability on the Electricity Board and its officials as well as the land owner, for the

electrocution death of the deceased Marappan?

(2) Whether the Trial Court was justified in applying the multiplier 20, even though the finding of the Trial Court was to the effect that the deceased

died at the age of 45?

(3) Whether the interest awarded at the rate of 9% per annum was just and proper?

(4) Whether the Trial Court was justified in not awarding compensation under various other usual sub heads?

(5) Whether there is any perversity or illegality in the judgment and decree of the Trial Court?

8. All these points are taken together for discussion as they are interlinked and inter-woven with one another.

9. The contention on the side of the Electricity Board that the land owner ought to have maintained his coconut trees in proper condition, in my

opinion, is a far fetched one, which lacks the back of the law as well prudence. It is well established by evidence that around the time of the

accident there was rainy weather and because of that the electricity live wire got snapped, but the electricity supply did not get disconnected

automatically as it was legally and scientifically expected to happen. The Electricity Board officials would artificially plead that inasmuch as the live

wire got cut in the middle, but it did not touch the ground, whereupon the electricity supply continued without getting automatically disconnected

and that there was no fault on the part of the Electricity Board. Such a contention on the part of the Electricity Board officials cannot be

countenanced. Irrespective of the fact whether the live wire touches the ground from the pole or not no sooner the wire gets cut for some reason,

the electricity supply should automatically get snapped and for that there should be appropriate device at the concerned electricity pole (sic), to

which the live wire is attached. But in this case, it is clear that there was negligence on the part of the electricity board in not maintaining such

device. Whenever there is any bad weather, it is the duty of the Electricity Line Inspector concerned to see as to whether the electric wires passing

overhead, are in tact, but in this case, no such steps were found to have taken.

10. The expectation that the land owner should cut the dry coconut leaves, in my considered opinion, even by phantasmagorical thoughts cannot

be countenanced and upheld. A land owner cannot go and see every day and cut the dry coconut leaves and keep THEM in good condition. The

Electricity Department took the risk of taking the overhead electric wires beside the coconut trees in a coconut grove and in such a case, they

should have been careful enough in seeing that proper devices were maintained as observed by me supra. Wherefore, I am of the considered view

that the Trial Court without any proper discussion and reasons, simply mulcted the land owner also with the liability and as such, the land owner

cannot be made liable to pay compensation in this case. As a sequelae his appeal should be allowed exonerating him from the liability to pay

compensation as per the decree of the lower Court and only the Electricity Department should bear the burden of paying the compensation.

11. In the plaint itself, it is found averred that at the time of the death of the deceased, he was earning a sum of Rs. 1,000/- per mensem and

accordingly if worked out, his annual income comes to Rs. 12,000/-. The lower Court accepted it, with which this Court cannot find fault with as it

is quite reasonable and no elaboration is required. However, the Trial Court deducted only 1/4th towards expenses which the deceased would

have incurred for maintaining himself had he been alive, from his income. The deceased died without leaving any child, but only his widow, his aged

mother and his unmarried sister. As such, one third should be deducted towards his expenses. Accordingly if worked out, the annual dependency

comes to Rs. 12,000/-, Rs. 4,000 (one-third) = Rs. 8,000/-.

12. The Trial Court once again fell into error in applying the multiplier 20. It is a trite proposition of law that a cue can be taken from the II

Schedule appended to the Motor Vehicles Act in choosing the multiplier. Accordingly if applied, 15 is the proper multiplier, in view of the finding

of the lower Court that the deceased died at the age of 45; However the lower Court committed error in not awarding compensation under the sub

heads (i) loss of consortium, (ii) loss of love and affection, (iii) loss of estate and loss of expectancy of life and (iv) funeral expenses. Wherefore,

towards funeral expenses, a sum of Rs. 2,000/- can be awarded in

commensurate with the status of the deceased and a sum of Rs. 15,000/- each could be awarded under the other three sub heads referred to supra.

13. Accordingly, the following formula emerges:

14. The Trial Court also awarded 9% interest per annum from the date of the suit till the date of payment and that should be reduced to 7.5% per

annum on the compensation assessed in commensurate with the precedents of the Honourable Apex Court.

15. The fact remains that after the passing of the decree, the first plaintiff, the mother of the deceased died leaving behind his son Nallusamy and

her married daughter Saraswathi and they shall be allotted cumulatively a sum of Rs. 40,000/- (Rupees forty thousand only) out of the total

compensation and the remaining sum of Rs. 1,27,000/- shall be allotted to the widow, namely Gomathi. In the result, A.S. No. 191 of 2009 filed

by the land owner is allowed exonerating him from the liability to pay compensation and A.S. No. 740 of 2002 filed by the Electricity Board and

its officials is partly allowed modifying the judgment and decree of the Trial Court by reducing the total compensation from Rs. 1,80,000/- with 9%

interest per annum to Rs. 1,67,000/- with 7.5% per annum from the date of suit till realisation with Trial Court costs. However, there shall be no

order as to costs in the appeals.