

(2015) 05 CAL CK 0047
In the Calcutta High Court
Case No : F.A. No. 121 of 2004

The Assistant Engineer (O and M) W.B.S.E.B. and Others	APPELLANT
Vs	
Mahima Ghosh and Others	RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 CHN 545 : (2016) 1 WBLR 605

Hon'ble Judges : Nishita Mhatre, J;Asha Arora, J

Bench : Division Bench

Advocate : Bhaskar Mitra and R.M. Chottopadhyay, for the Appellant; Vinay Misra and S.K. Bakshi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Asha Arora, J.—This is yet another instance of negligence of the West Bengal State Electricity Board (for brevity referred as the W.B.S.E.B) in maintaining the electric line under their management and control in consequence of which a minor girl was electrocuted. On 5th February, 1990 at about 9.30 a.m when the victim Mahima Ghosh was passing through the field in Plot No. 2288 at Village Gourdanga, she came in contact with a live high voltage electric wire which was lying on the said land. Due to electric shock the victim's right hand and right thigh were severely burnt. Her right hand had to be amputated and she became disabled. With these averments the suit was filed against the Assistant Engineer, W.B.S.E.B, Katwa, Divisional Engineer, W.B.S.E.B, Burdwan and W.B.S.E.B, Bidyut Bhavan, Bidhan Nagar, Calcutta seeking compensation to the tune of Rs. 2,00,000/- alleging negligence on the part of the defendants in maintaining the electric line in question.

2. In their written statement before the Trial Court the defendants categorically disputed all the material contentions made in the plaint. They specifically denied that the plaintiff sustained any injury due to electric shock from the electric line of W.B.S.E.B. Defendants also denied negligence on their part in maintaining the

electric line and alleged that there were cases of theft of electricity and electric wires in the area of Gourdanga - Simulgachhi at the relevant time due to which the wires may have snapped. The said circumstances were beyond their control and the accident if any, was not due to wilful negligence on their part. According to the defendants, they did not receive any written complaint regarding the incident. In the circumstances stated, it is the contention of the defendants that they are not liable to pay any compensation to the plaintiff.

3. During trial six witnesses including the victim were examined in support of the plaintiff case. Besides the oral evidence, plaintiff relied upon a certificate issued by PW 5 Dr. Arun Kumar Ghosh who attended the victim and a letter written by him to the Superintendent of Burdwan Medical College and Hospital which were marked Exhibits 1 and 2 respectively. On behalf of the defendants, Mr. Bijoy Chand Swarnakar, the Assistant Engineer, W.B.S.E.B. Katwa was examined as DW 1.

4. After considering the evidence on record and upon hearing the submissions on behalf of the parties, the Trial Judge came to the conclusion that plaintiff sustained electric shock and resultant injury due to negligence of the defendant in maintaining properly the electric line concerned. Holding thus, the suit was decreed on contest with cost by the learned Civil Judge (Senior Division) Katwa, District - Burdwan who awarded Rs. 2,00,000/- as compensation to the plaintiff. Being aggrieved by the aforesaid judgement dated 30th March, 2001 and decree passed in Money Suit No. 1 of 1991 the Defendant Nos. 1 and 3 (being the W.B.S.E.B. Katwa and the W.B.S.E.B. Bidhannagore, Calcutta) filed the instant appeal.

5. Mr. Mitra, the learned Counsel for the appellants strenuously argued that the Trial Court went wrong in holding that the W.B.S.E.B. was negligent in maintaining properly the electric lines on account of which plaintiff sustained electric shock. It has further been argued that there is no evidence to prove that the electricity transmission line had touched the plaintiff. Placing reliance on the case laws reported in Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, (1999) 2 ACC 432 : (1999) 7 JT 109 : (1999) 123 PLR 569 : (1999) 5 SCALE 539 : (1999) 7 SCC 298 : (1999) 2 SCR 458 Supp : (1999) 2 UJ 1557 : (2000) WritLR 331 and Kerala State Electricity Board Vs. Kamalakshy Amma, (1987) ACJ 251 : AIR 1987 Ker 253 : (1987) 1 ILR (Ker) 309 , learned Counsel for the appellants submitted that the burden is on the plaintiff to prove negligence on the part of the W.B.S.E.B. and that in our instant case the evidence on record does not establish that the plaintiff sustained electric shock on account of negligence of the W.B.S.E.B. in maintaining the electric lines. By referring to the case of W.B. State Electricity Board and Others Vs. Sachin Banerjee and Others, (2002) ACJ 337 : AIR 2000 SC 3629 : (1999) 9 SCC 21 Mr. Mitra sought to impress upon us that the W.B.S.E.B. cannot be held guilty of negligence since the electric line concerned had snapped due to theft of electricity by hooking. Inviting our attention to Rule

44 A of the Indian Electricity Rules, 1956 learned Counsel further argued that in terms of the said Rule it was the duty of the plaintiff to give written information regarding the alleged accident to the W.B.S.E.B. but no such intimation or complaint was received by the appellants. It has also been contended that the incident was not reported to the local police station or to the local Gram Panchayat which renders the plaintiff's case unworthy of credence.

6. Coming to the evidence adduced in support of the plaint case, let us first evaluate the testimony of P.W. 3 Mahima Ghosh who is the victim and a vital witness. The relevant portion of her evidence is quoted thus: "While I was in my maternal uncle's house in the field a hanging live wire hit my head and with my hand I removed the live wire. I was removed to Katwa Sub-Divisional Hospital. On 5th February, 1990 the incident took place. I also sustained injury on my head. From Katwa Sub-Divisional Hospital I was removed to Burdwan Medical College and Hospital where my right hand was amputated." Learned Counsel for the appellant pointed out that the evidence of the victim is not in conformity with the averment in the plaint which speaks of a live wire lying in the field while P.W. 3 stated in her evidence that it was a hanging live wire. The contradiction referred is immaterial and of no consequence as it does not affect the substratum of the plaintiff's case that she sustained electric shock from a live electric wire lying unattended in the field. Where it is proved that the victim sustained injury due to electric shock from a live wire hanging down on the ground from an electric pole, there is a presumption of fact that there was want of proper care on the part of those in the management or control of the power supply system at the particular place. In the instant case the evidence of P.W. 3 that she came in contact with a live wire while passing through the field could not be nullified in cross-examination. It has also surfaced in the cross-examination of P.W. 3 that she had been to the field in response to nature's call when the accident took place. Nothing could be elicited in the cross-examination of P.W. 3 to discredit her sworn version of the incident. We do not find any reason to disbelieve the evidence of P.W. 3 which inspires confidence. On behalf of the W.B.S.E.B. no attempt was made to give any suggestion to P.W. 3 in cross-examination that there was no live wire hanging on the ground or that there was proper maintenance of the electric line in question by the W.B.S.E.B.

7. P.W. 2 Kartick Chandra Ghosh is the father of the victim while P.W. 4 Swapan Kumar Ghosh is her uncle. Both these witnesses spoke about the incident in almost the same voice. Though these two witnesses did not personally witness the incident, they were aware of the fact that a high voltage electric line runs through Gourdanga village. There was no cross-examination on behalf of W.B.S.E.B. on this point. It was suggested to P.W. 2 in cross-examination that the defendant had no wilful negligence and that they duly maintained the high voltage electric line. But mere suggestion is not proof. Curiously enough, no such assertion was made by D.W. 1 Bijoy Chand Swarnakar the Assistant Engineer, Katwa W.B.S.E.B. There is nothing in the four corners of the evidence of D.W. 1 to show that the high voltage electric line which passes through Gourdanga

village was properly maintained by the W.B.S.E.B. D.W. 1 simply made a vague statement that there was no negligence on their part. The father of the victim as well as her uncle (P.W. 2 and P.W. 4) deposed regarding the victim's medical treatment by Dr. Arun Kumar Ghosh at Katwa Sub-Divisional Hospital. P.W. 5 Dr. Arun Kumar Ghosh who treated the victim in the said hospital on 9th February, 1990 lends corroboration to the evidence of the victim as well as that of P.W. 2 and P.W. 4. We get from the evidence of the Medical Officer (P.W. 5) that the victim sustained electrical burn on upper limb with gangrene of little and right finger. In course of his evidence the Medical Officer proved the certificate dated 17th April, 1990 along with a forwarding letter dated 9th February, 1990 issued by the Medical Officer of Katwa Sub-Divisional Hospital referring the victim to Burdwan Medical College and Hospital for better treatment. These two documents were marked Exhibits 1 and 2 respectively. From Exhibit 1 we find that the victim was admitted to Katwa Sub-Divisional Hospital with electrical burn on right hand with impending gangrene and burn on right thigh. She was transferred to Burdwan Medical College and Hospital on 9th February, 1990 for further treatment. Evidently, the medical evidence on record is in conformity with the evidence of the victim and that of her father as well as her uncle on the point of electrical burn injury sustained by the victim. P.W. 6 Shyama Pada Bhandari is another material witness whose evidence is of tremendous significance. This witness is not related to the victim. He is a resident of Gourdanga village. P.W. 6 testified regarding the accident by stating that on the date of incident at about 9/9.30 a.m. Mahima Ghosh was hit by a live wire in consequence of which she fell down. P.W. 6 removed the victim by a bamboo pole and informed her parents. It has been elicited in the cross-examination of P.W. 6 that he found the victim lying on the ground when he was going for angling in a pond. This witness truthfully conceded in his cross-examination that he did not notice the live wire touch the victim. In response to a query in cross-examination P.W. 6 stated that there was one piece of live wire hanging and lying on the ground. This statement which has emerged in the cross-examination of P.W. 6 is clearly in aid of the plaintiff's case. Being quizzed in cross-examination P.W. 6 affirmed that the bamboo pole was used for detaching the victim from the live wire. It is significant to mention that no suggestion was given to P.W. 6 in cross-examination that the electric installation at the place of occurrence was properly maintained and attended to by the W.B.S.E.B. Nothing could be extricated from the mouth of P.W. 6 to render his evidence doubtful.

8. The Trial Court placed absolute reliance on the evidence of the witnesses herein above discussed and rightly arrived at the conclusion that the victim sustained burn injuries in the manner testified by the witnesses at the time and place mentioned. Drawing inspiration from the decision reported in Kerala State Electricity Board Vs. Kamalakshy Amma, (1987) ACJ 251 : AIR 1987 Ker 253 : (1987) 1 ILR (Ker) 309 , the Trial Court did not err in holding that as the plaintiff succeeded in proving her case of electrocution by a live wire hanging down from an electric post, there is a presumption of fact that there was want of proper

care on the part of those in the management and control of power supply system at the particular place. In our instant case, the plaintiff having discharged the burden of proof, it is for the W.B.S.E.B. to rebut the presumption with positive evidence to show that they have been properly maintaining the electric installations and electric lines in the area under their control and management and that there has been no negligence on their part. D.W. 1 Bijoy Chand Swarnakar is the Assistant Engineer W.B.S.E.B. Katwa who deposed on behalf of the defendants. This witness stated in his evidence that normally a live electric line becomes dead when it falls from the pole. He further stated that a live High tension wire may fall due to theft/damage of wire. He merely made a bald statement that there was no negligence on the part of the Officers and staff of W.B.S.E.B. In his cross-examination D.W. 1 admitted that he has no personal knowledge how the wire fell down nor could he say whether the wire was hanging. He conceded in his cross-examination that in case of falling of hanging wire it may be live. We get from the mouth of this witness in cross-examination that he did not enquire about the incident. It is clear that the evidence of D.W. 1 is of no help to the W.B.S.E.B. who failed to rebut the presumption. It is indeed surprising that D.W. 1 supposed to be a responsible officer of the W.B.S.E.B. did not make any utterance in his evidence that they have been properly maintaining the electric lines and installations at the place of occurrence. This apart, it has been contended in the written statement that there were cases of theft of electricity in the area at the relevant time on account of which, an electric wire may get snapped but no evidence has been led by the W.B.S.E.B. in support of this contention. There is absolutely nothing in the evidence of D.W. 1 to show that the victim was electrocuted because of illegal hooking or theft of electricity. Therefore the submission on behalf of appellant/W.B.S.E.B. in this regard is fallacious. For the same reason reference to the case law reported in W.B. State Electricity Board and Others Vs. Sachin Banerjee and Others, (2002) ACJ 337 : AIR 2000 SC 3629 : (1999) 9 SCC 21 , by the learned Counsel for the appellant is of no assistance. The decision is distinguishable on facts from our present case for the reason that the victims therein died due to electrocution because of illegal hooking for the purpose of theft of electricity and negligence of the Electricity Board could not be established. In our instant case, negligence on the part of W.B.S.E.B/appellant has been clearly established by cogent evidence. The W.B.S.E.B. failed to rebut the presumption by leading positive evidence in support of their case of proper care and maintenance of the concerned electric line.

9. For the reason herein before discussed in extenso, the case law reported in Kerala State Electricity Board Vs. Kamalakshy Amma, (1987) ACJ 251 : AIR 1987 Ker 253 : (1987) 1 ILR (Ker) 309 cited on behalf of appellants finds no application to our present case. Rather, the citation referred supports the plaintiff's case. Reliance placed by the learned Counsel for the appellants on the decision of the Apex Court in the case of Chairman, Grid Corporation of Orissa Limited and others versus Sukamani Das and another reported in Chairman, Grid

Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, (1999) 2 ACC 432 : (1999) 7 JT 109 : (1999) 123 PLR 569 : (1999) 5 SCALE 539 : (1999) 7 SCC 298 : (1999) 2 SCR 458 Supp : (1999) 2 UJ 1557 : (2000) WritLR 331 is also of no avail. In the case law referred, compensation was claimed by filing a writ petition. It was held by the Supreme Court that the case was not a fit one to be entertained under Article 226 of the Constitution. Where disputed questions of fact are involved, a petition under Article 226 of the Constitution is not a proper remedy. The writ petitioners should have been directed to approach the Civil Court. It was further observed that in view of the specific defence raised by the appellants they deserved an opportunity to prove that proper care and precaution was taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or due to unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. In our case at hand the appellant/W.B.S.E.B. got ample opportunity to produce evidence of rebuttal but no such evidence could be brought on record. Besides, the factum of negligence on the part of the appellants and the circumstances under which the victim had come in contact with a live wire could be clearly established by credible evidence in our present case.

10. Reference to Rule 44 A of the Indian Electricity Rules, 1956 by the learned Counsel for the appellant is also of no help to exonerate the W.B.S.E.B/appellant from the liability to maintain properly the electric installations under their control and management. Rule 44 A of the Indian Electricity Rules, 1956 relates to "intimation of accident" and provides that: "If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with any part of the electric supply lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorised person of the State Electricity Board/Supplier, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report in the form set out in Annexure XIII within 48 hours of the knowledge of occurrence of fatal and all other accidents. Where practicable a telephonic message should also be given to the Inspector immediately the accident comes to the knowledge of the authorised officer of the State Electricity Board/Supplier or other person concerned." It is abundantly clear from the aforesaid rule that any authorised person of the State Electricity Board/Supplier, is also under an obligation to send to the Inspector a telegraphic report regarding the incident within 24 hours of the knowledge of the occurrence of the fatal accident and a written report regarding the incident should be sent within 48 hours. In the instant case D.W. 1 the sole witness examined on behalf of W.B.S.E.B. candidly admitted in his cross-examination that he has no personal knowledge regarding the incident and he did not make any enquiry about it. The authorised persons of the W.B.S.E.B. can not claim exemption from duty simply on the ground that

they were not aware of the incident or did not receive any intimation regarding the matter. The W.B.S.E.B. can not shirk its responsibility of conducting drives at regular intervals in the area within their management and control to see that their electric lines and electric installations are properly maintained, adopting all safety methods and precautionary measures. The unfortunate incident of electrocution resulting in injuries to the victim would not have occurred if the W.B.S.E.B. had been maintaining properly and regularly the electric wires in the concerned area which is admittedly under their management and control.

11. On the point of the quantum of compensation awarded by the Trial Court, learned Counsel for the appellant did not advance any submission assailing the same as unreasonable or unfair. It appears to us that in working out the compensation the Trial Court took into consideration the age of the victim, her pecuniary condition, the injuries caused due to electrocution together with the fact that her prospect of marriage may be adversely affected thereby. The compensation of Rs. 2,00,000/- (two lac) awarded by the Trial Court after considering the various aspects, is in our opinion just, fair and reasonable.

12. Pursuant to our foregoing discussion we are convinced that there is no reason to interfere with the impugned judgment and decree which is hereby affirmed.

13. Consequently the appeal is dismissed but without any order as to costs.

14. We direct the appellants to deposit the balance decretal amount with the Registrar General within one month from today in default of which the amount shall carry interest @ 8% per annum till realisation. Upon such deposit the respondent shall be permitted to withdraw the same on proper identification and receipt.

15. Interim order if any, stands vacated.

16. L.C.R along with a copy of the judgement be sent to the Trial Court immediately.

17. Urgent Photostat certified copy of this judgement if applied for, shall be supplied to the parties subject to compliance of requisite formalities.

Later:

Mr. Ram Mohan Chattopadhyay, learned Counsel for the respondent seeks a stay of this judgement. We are not inclined to grant this prayer.

Stay refused.