

(2011) 04 KAR CK 0138

In the Karnataka High Court

Case No : Regular First Appeal No. 3001 of 2010

The Section Officer, HESCOM Ltd., and Others

APPELLANT

Vs

Smt. Parawwa and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 96
Workmens Compensation Act, 1923 — Section 19 (2), 3 (5)

Citation : (2011) ILR (Kar) 2763

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : B.S. Kamate, for the Appellant; Sriyuths Sriharsh A. Neelopant and S.M. Hiremath, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—This is a defendants appeal namely by defendants 1 to 3 in O.S. No. 269/2006 on the file of the Ist Additional Civil Judge (Sr. Dn), Gokak, questioning the correctness and legality of the Judgment and decree passed in the said suit on 10-9-2009 decreeing the suit for damages for Rs. 15,51,379/- claimed by Legal heirs of a deceased employee who died due to electrocution.

2. Parties are referred to as per their rank in Trial Court.

2.1. One Sri. Hanamanth Sontannavar, was employed as a lineman in Hubli Electricity Supply Company (hereinafter referred to as HESCOM for brevity) and had been appointed on 1-4-1984. The said Hanumanth Sontannavar while on duty on 11-3-2004 at about 9.30 A.M. along with H.P. Hussain Khan and two others by name Sri. B.R. Todavekar and R.Y. Dyamakkagol, lineman had gone to Beeragaddi area to the land of one Sri. Karigar to disconnect the cut joint and to reconnect it to a new line. Before engaging in the said work it was confirmed that there was no electrical power supply in the Nallanatti feeder village area from Gokak Section Office. On such confirmation said Hanumanth Sontannavar is said to have climbed the electric pole in the land of Karigar and got two joints cut and

while cutting third joint he is said to have screamed loudly and fell down from the pole after receiving several electrical shocks and on account of which he is said to have suffered severed grievous injuries over the entire body and had become unconscious after falling down and was shifted to the Hospital of Dr. M.G. Umarani in Gokak in a jeep and later on shifted to K.L.E. Hospital, Belgaum for further treatment and after three days i.e., 14-3-2004 he is said to have succumbed to the said injuries. On account of the death of the said Hanumanth Sontannavar the wife, sons and daughter filed a suit in O.S. No. 269/2006 seeking damages against defendants.

2.2. On registering the said suit, suit summons was issued and defendants 1 to 3 filed their written statement. Except to the extent of admitting the employer and employee relationship, averments made in the plaint came to be denied. Defendant filed separate written statement and also denied the plaint averments. 5th defendant adopted the statement filed by the 4th defendant. Defendants Nos. 1 to 3 contended that accident in question occurred on account of the negligent act of defendants 4 and 5 and it was contended that police had investigated into the alleged overt acts of defendants 4 and 5 and had submitted a charge sheet against them in the Criminal Court. It was also contended that compassionate appointment was given to the son of the deceased. It was contended that on account of illegal connection taken by defendants 4 and 5 death was caused and defendants 1 to 3 sought from being absolved. Defendants 4 and 5 denied all the averments made in the plaint and it was contended that suit is barred by limitation.

2.3. On the basis of the pleadings of the parties, Trial Court framed following issues for its consideration:

- (i) Whether the plaintiffs prove that Hanamanth has died due to electrocution and due to the negligence of all the defendants?
- (ii) Whether the defendants No. 1 to 3 prove that, the death of Hanamanth is due to the negligent act of defendants Nos. 4 and 5?
- (iii) Whether the defendants No. 4 and 5 prove that, the suit is barred by limitation?
- (iv) Whether the plaintiffs are entitled for compensation of Rs. 10,00,000/- with interest at 18% per annum, as claimed?
- (v) What decree or order?

2.4. The first plaintiff namely the wife of the deceased got herself examined as P.W.1 and she also examined a witness by name Shankarayya and got marked Exs. P.1 to P.15. Defendants Nos. 1 to 3 examined Sri. Basavaraj S. Badiger as D.W.1 and 4th defendant got himself examined as D.W.2 and one witness by name Shivaji R. Arabhavi was examined as a witness on behalf of defendants 4 and 5. On the basis of the pleadings and evidence of the parties, Trial Court by its Judgment and decree dated 10-9-2009 decreed the suit for a sum of Rs.

15,51,379/- and held that sum of Rs. 3,38,880/- deposited by defendants 1 to 3 before jurisdictional Workmen Compensation Commissioner is to be deducted from the said amount of Rs. 15,51,379/- and held that plaintiffs are entitled to a total compensation of Rs. 12,12,499/- from defendants 1 to 3 with interest at 6% P.M. from the date of institution of the suit till the date of deposit of the said amount. The amount decreed also came to be apportioned between the defendants and suit against defendants 4 and 5 came to be dismissed. It is this Judgement and decree which is questioned in the present appeal by defendants 1 to 3.

3. Heard Sri. B.S. Kamate, Learned Counsel for the appellant and Sri. Sriharsh A. Neelopant for respondents 1 to 3 and Sri. Ravi S. Balikai for defendants 4 and 5.

4. It is the contention of Mr. B.S. Kamate, Learned Counsel for the appellant that suit itself was not maintainable and there was no dispute that deceased Hanumanth Sontannavar was an employee under the Corporation and thus there was a relationship of "employer" and "employee" between defendants 1 to 3 on the one hand and deceased on the other and as such provisions of Workmen's Compensation Act, 1923 was applicable and he would contend that on account of the death of Sri. Hanumanth Sontannavar, the employer was liable for payment of compensation u/s 3 of the Workmen Compensation Act, 1923. He would submit that under sub-Section (2) of Section 19 Civil Courts jurisdiction to try a dispute of a Workman which ought to be tried by the Workmen's Compensation Commissioner as per Workmen's Compensation Act, 1923 is barred and as such he submits that suit ought to have been dismissed particularly when the plaintiffs have received the compensation deposited before the Commissioner by the employer.

5. He would further elaborate his submissions by contending that pursuant to the deposit made by defendants 1 to 3 before jurisdictional Commissioner by giving notice, the Commissioner for Workmen's Compensation called upon the legal heirs of the deceased to receive the said amount and notice came to be issued to the legal heirs namely the plaintiffs and on receipt of such notice they have appeared before the Commissioner for Workmen's Compensation by submitting an application and thereafter an award came to be passed on 30-6-2004 for payment of Rs. 3,38,880/- under Ex. D.4 which was in full and final settlement of all claims pertaining to the deceased. As such he would submit that suit subsequently filed was not maintainable. He would also submit that certified copy of the application produced alongwith a memo before this Court on 2-2-2011 would go to show that an application had been made by the first plaintiff on 22-6-2004 to the Workmen's Compensation, Sub-Division-I, Belgaum and she has also made a sworn statement on the same day and it is based on these materials as well as statement of the first plaintiff that Commissioner for Workmen's Compensation, Belgaum passed award as per Ex. D.4 and this would clearly go to show that plaintiffs had submitted themselves to the jurisdiction of the Commissioner for Workmen Compensation who exercise the powers under

provisions of Workmen's Compensation Act and adjudicated the claim and as such claim for damages in a Civil Court was not maintainable.

6. He would further contend that Trial Court has proceeded to decree the suit by considering the claim of the plaintiffs as though it is a claim under Motor Vehicles Act, 1988 and not considering the fact that deceased expired not on account of the negligent act of defendants 1 to 3 but on account of the negligent act of defendants 4 and 5. He would also contend that findings of the trial Court that defendants 1 to 3 cannot contend that it was due to overt act of defendants 4 and 5 about illegal drawing of power supply from a different line is erroneous and would contend that Trial Court grossly erred in not examining the evidence on record and thereby decreeing the suit for Rs. 15,51,379/- when the claim of the plaintiff itself was to the extent of Rs. 10,00,000/- and as such he would seek for allowing of the appeal and dismissal of the suit.

7. Per contra Sri. Sriharsh Neelopanth appearing for respondents 1 to 3 would support the Judgment and decree passed by the Trial Court and he would contend that Clause (a) and (b) of sub-Section (5) of Section 3 is not attracted to the facts and circumstances of the case by contending that such a bar would be applicable only when there is a claim instituted either by the Workmen or the legal heirs of the deceased Workmen and only when they have instituted a claim petition before the jurisdictional Workmen's Compensation Commissioner their suit for damages would not be maintainable and not otherwise. He would contend in the absence of their instituting a claim petition Clause (a) of Section 3(5) would not get attracted. He would further submit that agreement referred to in Clause (b) of sub-Section (5) of Section 3 is referable to the memorandum of agreement referred to u/s 28 of the Workmen Compensation Act, 1923 and it is not the case of the appellants herein or defendants 1 to 3 before the Court below that there was any such agreement entered into between deceased workmen and the Corporation and submits that said agreement if any had to be drawn as per Forms "K", "L" and "M" as provided under Rule 48 of The Workmen's Compensation Rules, 1924 and admittedly there was no such agreement entered into between the employer and deceased employee and in the absence of any such agreement entered into between them, the said provision namely Clause (b) of sub-Section (5) of Section 3 would not get attracted and as such he would contend that contention of the Learned Counsel for appellant regarding non-maintainability of the suit is liable to be rejected.

8. He would further elaborate his submissions by contending that deposit of amount made by defendants 1 to 3 in the instant case before Commissioner for Workmen's Compensation is only to absolve themselves of their liability under the Workmen's Compensation Act namely to avoid any penal consequences and contends that this deposit does not prevent the plaintiffs from prosecuting their claim in a Civil Court against defendants and he would also contend that this act of depositing the amount by defendants 1 to 3 before the Workmen's Compensation Commissioner would go to show that they have admitted their

liability. He would also contend that it is only on the notice issued by the Commissioner for Workmen's Compensation legal heirs of the deceased Workmen have appeared before the Commissioner and have agreed to receive the amount which would clearly go to show that they have not filed a claim petition either u/s 10 or they sought for payment of compensation and it is only in those circumstances where claimant files a claim petition and simultaneously files a suit for damages the jurisdiction of the Civil Court to adjudicate such claim for damages would be barred and when legal heirs of the deceased Workmen have not instituted a claim petition before the jurisdictional Commissioner, it does not prohibit them from filing a Civil Suit and seek damages against the defendants 1 to 3 Corporation. He would also contend that u/s 9 of the CPC all Civil rights of the parties are required to be adjudicated by a Civil Court and jurisdiction of Civil Court being vast and expansive there is no prohibition to try the suit for damages unless there is an express prohibition under any statute to adjudicate any such prayer.

9. Mr. Sriharsh Neelopanth Learned Counsel appearing for respondents 1 to 4 would also elaborate his submissions by contending that Trial Court was justified in applying the principle of strict liability and decreeing the suit. He would contend that Trial Court can mould the relief and even though the plaintiffs had claimed 10 lakhs, there was no prohibition for the Civil Court to mould the relief and grant a Judgment and decree in excess of what is claimed by the plaintiffs. He would also draw the attention of the Court to the written statement filed by defendants 1 to 3 to contend that there is no whisper made by the defendant as to payment of compensation to the plaintiffs was under the Workmen Compensation Act and would also draw the attention of the Court to the evidence of D.W.1 wherein the witness examined by the Corporation would admit that plaintiff's had not filed a claim petition before the Commissioner for Workmen Compensation and as such he would contend that Trial Court was justified in decreeing the suit. On these grounds counsel for defendants 1 to 4 would seek for dismissal of the appeal and prays for affirming the Judgment and decree passed by the Trial Court. In support of his submission he has relied upon following Judgments.

1 Napoleon Fernandes vs. The Union of India (1976) 78 BLR 337.

2 Jasuben Vs. Gujarat Electricity Board, .

3 Managing Director, Karnataka Power Corpn. Ltd., vs. Geetha and Others (1988) ACJ 251

4 New India Assurance Co. Ltd., vs. Geeta Sinha and Ors. (2004) 2 ACC 332

5 Meaning of Word "Institute" (1989) ACJ 79

6 Vimal and Others vs. Mansharam Sharma and Others AIR (1966) Pat 130

7 Union of India vs. Satyabati and Others AIR (1966) Pat 130

8 Borawwa W/o Mallappa Guggari & Anr. vs. Karnataka Power Transmission Corporation Ltd. & Ors. AIR (2007) KAR 6

9 Paramjit Kaur & Ors. vs. State of Punjab & Ors. (2009) P & H 27

10 S. Vijayalakshmi and Others vs. Bhashkarachar and Another (2003) (1) KLJ 501

11 Nagappa Vs. Gurudayal Singh and Others,

12 New India Assurance Company Vs. Rattu Devi and Others,

13 Bhagat Singh and Others vs. Jaswant Singh AIR 1966 SC 1861

14 Vinod Kumar Arora Vs. Surjit Kaur,

15 K Shivalingaiah vs. B. V. Chandra Shekara Gowda and Others AIR 1993 KAR 29

16 Deen Dayal Vs. Sanjeev Kumar,

17 Guru Nanak Education Trust (Regd.), Model Town, Ludhiana and others Vs. Sh. Balbir Singh and others,

18 D'Souza vs. Rama Rao, by LR "S. 1976 (1) KLJ 235

10. Sri. Ravi S. Balekai, appearing on behalf of defendants 5 and 6 namely respondents 5 and 6 in this appeal would support the Judgment and decree passed by the Trial Court and would contend that Trial Court was justified in applying the principle of strict liability and in the event of there being no institution of a claim petition as contemplated u/s 10 read with Section 22 of the Workmen Compensation Act the Trial Court was justified in decreeing the suit as prayed for. Accordingly, he would submit that Trial Court was correct in dismissing the suit against defendants 4 and 5 and prays for confirmation of the same.

11. Having heard the Learned Advocates appearing for the parties following points would arise for my consideration.

(i) Whether Civil Court would not have jurisdiction to try the suit in question filed by the plaintiffs in view of Section 19(2) of the Workmen's Compensation Act, 1923?

Or

Whether a suit for damages in tort filed by the legal heirs of the deceased workman was maintainable after receiving the compensation amount deposited by the employer before the jurisdictional workmen compensation in view of Section 3 (5) of the W.C. Act?

(ii) Whether the Judgment and decree passed by the Trail Court is contrary to evidence on record and calls for interference in this appeal.

(iii) What order?

BRIEF BACKGROUND OF THE CASE:

12. Parties are referred to as per their rank in Trial Court. Plaintiff No. 1 is the wife and plaintiffs 2 to 4 are the children of one deceased Sri. Hanumanth Sontannavar. The said Sri. Hanumantha Sontannavar was appointed as a lineman at HESCOM on 1-4-1984. On 11-3-2004 at about 9.30 A.M. abovesaid Sri. Hanumanth Sontannavar along with Sriyuths H.B. Hussainkhan, B.R. Todavekar, R.Y. Dyamakkagol had gone to Beeragadi area wherein the land of one Sri. Karigar is situated to disconnect the cut-point and to re-connect it to a new line. In order to execute the said work Sri. Hanumanth Sontannavar and others ensured that Electric power supply from Gokak Section Office was stopped and after ensuring the same said Sri. Hanumanth Sontannavar is said to have claimed the pole and other three persons were standing on the ground watching the work being executed by said Sri. Hanumanth Sontannavar. It was contended that Sri. Hanumanth Sontannavar had cut two jumps and while he was cutting a third jump he suddenly screamed aloud and fell to the ground on account of receiving several electrical shocks to his hand and he had suffered grievous injuries all over the body and became unconscious.

13. Immediately he was shifted to Dr. M.G. Umarani Hospital at Gokak in a jeep and later on shifted for further treatment to KLE Hospital, Belgaum where he is said to have succumbed to the injuries on 14-3-2004.

14. On verification by the other linemen it was found that cause of accident was on account of electrical motor functioning in the lands of defendants 4 and 5 which was engaged in the process of lifting water from Ghataprabha river. The electric supply to the said electrical motor was taken from another electrical motor installed in other land of defendants 4 and 5 situated within Melevanki feeder and it was found that defendants 4 and 5 has taken had through phase service wire illegally and unauthorisedly. It was contended in the suit that Sri. Hanumanth Sontannavar was engaged in disconnection and reconnection of the line in the land Sri. Karigar where the pole in question is situated and, the electric motor installed in the Nallanatti area i.e., in the lands of defendants 4 and 5 was running and was in the process of lifting water and electricity supply that feeded from the Starter box of the electrical motor installed in the lands of defendants 4 and 5 situated within an Nallanatti area was having electricity on account of which it flowed to the pole where the said Sri. Hanumanth Sontannavar was working. Defendants 4 and 5 were prosecuted C.C. No. 282/2005 by the Additional JMFC, Gokak and they were convicted for an offence punishable u/s 304A IPC and were directed to undergo S.I., for a period of six months. The said Judgment and conviction and sentence came to be challenged by defendants 4 and 5 in Criminal Appeal No. 174/2006 before the Fast Track Court I and Additional Sessions Judge, Belgaum who by order dated 12-9-2008 has allowed the appeal and set aside the Judgment of conviction and sentence passed in C.C. No. 282/2005.

15. In order to examine point 1 it would be necessary to extract relevant provisions of the Workmen's Compensation Act, Rules framed thereunder pressed into service as also Section 9 of Civil Procedure Code.

SECTION 9 OF CIVIL PROCEDURE CODE

9. Courts to try all civil suits unless barred. 7 The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation 1.- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation 2.- For the purposes of this Section, it is immaterial whether or not any fees are attached to the office referred to in Explanation 1 or whether or not such office is attached to a particular place.)

Workmen's Compensation Act 1923:

3. Employer's liability for compensation.

(1) If personal injury is caused (an employee) by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be liable-

(2) XXXX

(2A) XXXX

(3) XXXX

(4) XXXX

(5) Nothing herein contained shall be deemed to confer any right to compensation on (an employee) in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by (an employee) in any Court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the (employee) and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

19. Reference to Commissioners._(1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not (an employee) or as to

the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by (a Commissioner).

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

28. Registration of agreements. (1) Where the amount of any lumpsum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable (to a woman, or a person under a legal disability) a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that-

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lumpsum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, (to a woman or a person under a legal disability) ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement (and may make such order), including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-Section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

29. Effect of failure to register agreement. Where a memorandum of any agreement the registration of which is required by Section 28, is not sent to the Commissioner as required by that Section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-Section (1) of Section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the (employee) by way of compensation whether under the agreement or otherwise.

Workmen's Compensation Rules. 1924:

48. Form of Memorandum: Memorandum of agreement sent to the Commissioner

under sub-Section (1) of Section 28 shall, unless the Commissioner otherwise directs, be in duplicate,, and shall be in as close conformity as the circumstances of the case admit with "Form K or Form L or Form M," as the case may be.

16. Section 9 of C.P.C. empowers Civil Court to try all suits of civil nature except the suits, the cognizance of which are expressly or impliedly barred. Civil Court would not be entitled to try the subject matter over which it has no jurisdiction. A bar on exclusive jurisdiction of Civil Court should not be readily inferred. At this juncture it would be of benefit to extract the following Judgments:

(i) The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.,

"Mr. Chagla next assailed the cesses imposed on another ground. He contended that in view of the decision of this Court in Tata Iron and Steel Company's case it was not open to the assessing authority to value the coal supplied to the factories and workshops at the controlled rate; he should have as suggested in that decision disintegrated the ultimate profits earned and found out the profit earned by the mine. We are of the opinion that it is impermissible for us to go into that question in these proceedings. The liability to pay tax is one thing and mode of computation of the net profits is another. The mode of computation is a matter for the assessing authorities except where the computation is done in violation of any provision of law. If there was any mistake in the computation, that mistake should have been got rectified by following the procedure prescribed in the Act. If the respondent company was aggrieved by the mode of computation adopted by the assessing authority, it should have agitated that question firstly before that Authority and thereafter before the Appellate Authority. Having not done so, the company cannot be permitted to raise that question in the present suit; otherwise the finality contemplated by Section 102 of the Act would become illusory. It is true, as observed by Lord Thankerton in AIR 1940 105 (Privy Council) that it is settled law that the exclusion of jurisdiction of a Civil Court is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled as observed by his Lordship that even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In the present case what is contended is not that any provision in the Act had been ignored by the assessing authority but that Section 72 thereof has not been properly interpreted by that authority. If the provisions of the Act form a precise, self-contained code, as we hold them to be, the assessee cannot be permitted to challenge the levy on the ground that the levy imposed on him is excessive. It must be remembered that the levy under the Act is imposed by a special law which law also provides its own remedies for correcting the errors that may be committed by the assessing authority. Where a liability not existing previously is created by a statute which statute at the same time provides a special or particular remedy for correcting any mistake that may occur in its enforcement

the aggrieved party must adopt the form of remedy given by the statute and no other. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, our present Chief Justice speaking for the Court has formulated the circumstances under which the jurisdiction of the Civil Court can be invoked in the matter of a levy of tax. Therein this Court has laid down that where the statute gives a finality to the orders of the special tribunals, the Civil Courts jurisdiction must be held to be excluded, if there is adequate remedy to do what the Civil Court would normally do in a suit. It is further laid down in that case that questions of the correctness of the assessment apart from their constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authority are declared final or there is an express prohibition under the particular Act. We do not think that the Civil Courts have jurisdiction to examine the correctness of the computation of the net profits made by the authorities under the Act.

(ii) *Smt. Lalithamma vs. R. Kannan* AIR 1966 MYS 178

Although in majority of cases, the place of solemnization can be located in some part of the Union of India in respect of which a Civil Court functioning under the CPC may be exercising territorial jurisdiction, the possibility of the said place falling outside the jurisdiction of any one of such Courts cannot be wholly discounted. Even otherwise, that no difference in the approach itself is called for a clear from the decision of the Supreme Court cited above. That case dealt with a provision of law which clearly provided for a plurality of Courts having jurisdiction. Nevertheless, their Lordships proceeding on the basis that a party in such a case has the liberty of choosing one among the several forums provided by the statute, pointed out that the matter should be looked upon from the point of view of the context and purposes of the particular statute. Dealing with Section 488(8) of the Code of Criminal Procedure, their Lordships pointed out that the circumstances of materiality were the anxiety of the law to minimise as far as possible the difficulties of a discarded wife who may be in a helpless position. We do not think that it can be contended that such or similar considerations are not available in the case of a wife seeking divorce on the ground set out in sub-Section (2) of Section 13 of the Hindu Marriage Act as in this case. Further, the normal considerations applicable in cases where the existence of jurisdiction in a Court is in question are generally those which help to resolve the doubt in favour of the existence of jurisdiction rather than its absence because of the fundamental principle that it is the duty of Courts to grant the relief sought of them and not lightly abdicate the jurisdiction which may be clearly vested in them by the law for the purpose of granting any such relief.

Thus, it emerges from the above that plea regarding exclusion of Civil Courts jurisdiction will have to be examined with reference to that particular enactment and find out whether such exclusion Clause is found in the enactment and if the answer is in affirmative then Civil Courts jurisdiction would be excluded and if the

answer is in negative Civil Courts jurisdiction would be available for being invoked.

17. It would also be of relevance to extract Judgment of Hon''ble Supreme Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, where seven propositions of law regarding exclusion of jurisdiction of Civil Court has been laid down by Hon''ble Apex Court. They read as under:

(1) Where the statute gives a finality to the orders of the special Tribunal the Civil Courts jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a Civil Court. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the later case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

A similar issue namely as to whether Sections 20 and 21 of Minimum Wages Act

excluded the jurisdiction of Civil Court when its challenge to the applicability and its extension to certain class of workers came up for consideration before Hon"ble Supreme Court in the case of The Pabbojan Tea Co. Ltd., etc. Vs. The Deputy Commissioner, Lakhimpur, etc., and was held as under:

There can be no question in this case that the Minimum Wages Act cuts across the contract between the employer and the employee and wherever applicable the employer is obliged to pay the minimum wages or take consequences of failure to pay it. Any employee who feels himself aggrieved by the refusal of the employer to pay the minimum wages fixed under the Act has the right to make a complaint either by himself or through the prescribed agents to the Authority mentioned in the Act. Under sub-Section (3) of Section 20, the Authority has to hear the applicant and the employer or give them an opportunity of being heard and could straightway give a direction as regards the alleged non-payment of the minimum rates of wages and such compensation as he thinks fit not exceeding ten times the amount of the excess of the minimum wages over that which was paid. It is true that the sub-Section provides for a further inquiry but such inquiry is to be at the discretion of the authority. The nature and scope of the inquiry would depend on the exact controversy raised in the case. If it be of a trivial nature, the tribunal can probably deal with it in a summary manner, but where it is alleged that the Notification under the Act is not applicable to a certain class of workers it is the duty of the authority to give a proper hearing to the parties allowing them to tender such evidence as they think proper before making an order which may have far-reaching consequences. The authority in this case instead of recording any evidence and properly hearing the matter, disposed of it in a perfunctory manner which could hardly be called a hearing. As a matter of fact, the only inquiry which took place in this case was a very informal one in the premises of the Doom-Dooma Club for the space of half an hour or so when the Authority had a talk with the managers of the tea estates. There is no provision for appeal or revision against the direction of the Authority although he may levy a penalty to the extent of ten times the amount by which the minimum wages overtop the payment actually made. Whatever he says is the final word on the subject. All this can but lead to the conclusion that Section 20 was not aimed at putting a seal on the adjudication if any under it. It was to be of a nature which suited the discretion of the officer concerned although he was given the powers of a Civil Court in certain respects. In such a situation, it is impossible to hold that the Legislature meant to exclude the jurisdiction of Civil Courts to go into the question of non-payment of minimum wages claimed as final. In our opinion, sub-Section (6) of Section 20 merely shows that the discretion of the Authority could not be questioned under any provision of the Act. It does not exclude the jurisdiction of the Civil Court when the challenge is as to the applicability of the Act to a certain class of workers.

18. At this stage, it would be advantageous to notice the provision of sub-Section (5) of Section 3 and Sub-section (2) of Section 19 of Workmen's Compensation Act, 1923.

3. Employer's liability for compensation.

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) xxxxx

(5) Nothing herein contained shall be deemed to confer any right to compensation on (an employee) in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by (an employee) in

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the (employee) and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

19. Reference to Commissioners.

(1) xxxxx

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

From combined reading of these two provisions it would emerge that a suit before Civil Court would not be maintainable under two eventualities namely:

(1) If the injured has already instituted a claim for compensation in respect of injuries sustained by filing a claim petition before the Commissioner.

(2) If there is an agreement between employee and employer for payment of compensation in respect of injury for payment in accordance with provisions of the Act.

As otherwise, the jurisdiction of Civil Court does not get excluded. At this juncture it would be of relevance to examine scope of Section 19 of Workmen Compensation Act, 1923. sub-Section (2) of Section 19 bar the jurisdiction of Civil Court to examine and deal with any question which is required to be dealt by the Workmen's Compensation Commissioner as required to be dealt by Commissioner. Said sub-Section contemplates that no Civil Court shall have jurisdiction to settle, decide or deal with any question, which is by or under this Act required to be settled, decided or dealt with by the Commissioner or to enforce any liability incurred under this Act. Thus the cognizance by the Civil Court would be barred in regard to the matters as enumerated in sub-Section

(2). They are settling deciding or dealing with any question and enforcing any liability incurred under the Act. Thus two requirements which needs to be satisfied by the Commissioner to act under the Act are:

(i) A party must sacrifice or forego their right under the common law.

(ii) The facts giving jurisdiction to the Commissioner to decide and settle such disputes as they would come within the ambit of the Act must also exist side by side.

When these two conditions are strictly fulfilled the Act would bar the jurisdiction of Civil Court on those aspects, namely settling, deciding and dealing with any question involved in the proceeding. Thus, the scope and scheme of this provision would not take away from the Civil Court its jurisdiction to give relief in part, but to provide alternate optional remedy for certain classes of person in certain circumstances and for certain events occurring. Thus, when holistic view is taken it is found from the scheme of Workmen's Compensation Act, the bar created rests on the doctrine of estoppel and acquiescence. Thus, it is clear and unambiguous that appointment of Commissioner u/s 20 of the Act to adjudicate claims is with a view to provide a separate and distinct forum other than the Civil Court for the purpose enumerated in Section 19 of the Act and at the same time keep open the jurisdiction of Civil Court to adjudicate and determine the liability in tort and same is not barred.

19. The Workmen's Compensation Act was enacted to provide a separate, speedy and cheap forum to a Workmen or his dependants for claiming compensation and for that purpose, wide powers are vested with the Commissioner who is interested with the adjudication of the claim. The Act creates a special type of liability on the employer to pay compensation at the fixed rate to his employee, who is rendered incapable of working due to an accident arising out of and in the course of employment. The purpose of the legislation is to compensate actual loss which the relatives have suffered. The Act being a piece of social security legislation and if any provision of the Act is capable of two interpretations, it ought to be construed liberally in favour of employee in order to achieve the objective of the Act for whose benefit the Legislature in its wisdom had enacted this special legislation.

20. In the backdrop of these circumstances it is necessary to consider the intention of the Legislature in creating such separate/special forum by enacting a special statute for settlement of disputes under the scheme of the statutes. It is no doubt true that Civil Court undoubtedly are vested with plenary powers to settle all kinds of civil disputes and admittedly they are under the normal hierarchy of Civil Court. If that is so, it is necessary to consider why legislature thought fit to create an alternate forum by enacting a special Act or statute for settlement of dispute and ousting the jurisdiction of Civil Court. It is in this background the aims and objects of special legislation, the purpose with which it was legislated and required to be achieved is to be considered. The settlement of

dispute before regular Civil Court is a long drawn process particularly because of the hierarchy of Courts provided under the Code of Civil Procedure. The order or decision whether interlocutory or final is always subject to appeal and revision and as such it would take reasonably long time. The workmen though is entitled to institute his claim for damages in respect of injuries sustained by him or by the legal heirs of deceased workmen in a Civil Court by filing a civil suit, settlement of such claim would naturally take long period and as such the legislature in its wisdom thought fit to provide a separate speedy, cheap forum to the workman or his dependants for settlement of compensation and thus created a special legislation that is Workmen's Compensation Act, 1923. Thus, the intention of the legislature is not to take away the jurisdiction of the Civil Court and for the limited purpose of settling, deciding and dealing which are expressly enumerated in sub-Section (2) of Section 19 the jurisdiction of the Civil Court is excluded.

21. Similarly, sub-Section (5) of Section 3 puts a bar on making two separate claims by the Workman. If a workman or his dependants institute a suit for damages in the Civil Court he/ they will not be entitled to claim compensation under the Act. In the event of a claim being lodged and Workmen's Compensation Commissioner adjudicates the claim and awards compensation as enumerated u/s 4 of the Act civil suit on same cause of action would be barred. However, in a Civil Court a workman can claim compensation beyond the amount which has been specified under the Act by proving among other things, the extent of not only loss but also actual and probable loss of future earnings. Thus, when the workman chooses the forum by electing the same he cannot opt out of it.

22. A combined reading of sub-Section (5) of Section 3 and sub-Section (2) of Section 19 it would clearly go to show that it does not take away jurisdiction of Civil Court to grant relief in tort since sub Section (5) of Section 3 indicates that workmen has option to claim compensation either under Workmen Compensation Act or can take recourse before Civil Court for damages. Where death occurs and it gives right to claim compensation by legal heirs of deceased under common law such party would be entitled to claim compensation under either of the laws but not under both. Embargo would surface under 2 eventualities viz., (i) if a claim petition has already been instituted (ii) if there is agreement between "employer and employee" to go before Workmen's Compensation Commissioner as otherwise choice is left to the person entitled to seek compensation to choose the forum namely whether he would seek remedy available under common law or invoke the provisions of Workmen Compensation Act. When the words used in a statute there is doubt about their meaning are to be understood in the sense best harmonised with the subject enactment. The meaning of words as found in the provision is to be understood in the background with which the object of the Act is to be attained or achieved. Golden Rule principle is a very useful role in the construction of a statute to adhere to the ordinary meaning of words used unless it is at variance with the intention of legislature or it leads to manifest absurdity

then only the language can be varied or modified while so interpreting a statute and not otherwise. Thus, the principle of "Construction ut res-magis Valeat-quam- pereat" namely "if the choice is between two interpretations narrower of which would fail to achieve the manifest purpose of legislation such construction should be avoided since it would reduce the legislation to futility and should rather accept such bolder construction for bringing about effective result".

23. Above stated principles when applied to the facts and circumstances of the case it requires to be adjudicated by taking note of following chronological events.

DATE

DETAILS/PARTICULARS

11.03.2004

Electrocution took place.

14.03.2004

Death of Sri. Hanumanth Sontannavar

10.06.2004

Notice issued to the Commissioner for Workmen Compensation by HESCOM u/s 8(i) of Workmen Compensation Act including a demand draft for Rs. 3,38,880/-

17.06.2004

Notice issued by Commissioner for Workmen Compensation to the wife of deceased Hanamanth.

30.06.2004

Application filed by legal representatives of deceased Hanamanth for payment.

30.06.2004

Statement of wife of deceased Hanamanth recorded.

30.06.2004

Demand Draft for Rs. 2,88,880/- paid. Wife of deceased and balance Rs. 50,000/- was ordered to be kept in Fixed Deposit.

28.09.2006

Suit in O.S. No. 269/2006 filed by legal representatives of deceased Hanamanth seeking award of damages by way of compensation of Rs. 10,00,000/- with interest at 18% P.A.

24. The words used in sub-Section (5) of Section 3 of Workmen's Compensation Act, i.e., in Clause (a) is "has instituted a claim". At this juncture it would be necessary to examine the word "Instituted" as used in Clause (a) of sub-Section

(5) of Section 3 which means setting on foot an enquiry. If a workman has filed a claim petition and withdraws it before the enquiry started, it cannot be construed as "instituted". Institute means to initiate something or cause it to begin or commencement. In identical circumstances where through proceedings initiated by Commissioner, claimants were informed about deposit made by employer it was held by High Court of Madhya Pradesh by following the Judgement of this Court in Karnataka Power Corporation and held by a Division Bench of High Court of Madhya Pradesh in the case of Vimal and Others vs. Mansharam Sharma and Others (Supra) as under:

The question, as we have said earlier, is one of election which can be done by initiation of proceedings in either of the two forums. Where, however, the claimants initiate proceedings only in one forum and exercise their option and take in election but a certain amount is made available to them although through the -media of Commissioner, workmen's Compensation, it cannot be said that the proceedings have been initiated by the claimants in other forums as well.

Thus, plaintiffs in the instant case by receiving the money deposited by the employer, through Commissioner for Workmen it cannot be held or construed as claimants had elected the forum under the Workmen 's Compensation Act. The application dated 22-6-2004 submitted by the wife of deceased before the Commissioner for Workmen Compensation which has been made available by the Learned Counsel for the Corporation by filing a memo on 2-2-2011 would also go to show that that she has only sought for payment of the said amount since a notice came to be issued by the Workmen's Compensation Commissioner. Hence, it cannot also be held that claimant had elected a forum by approaching the Workmen's Compensation Commissioner and had forgone her right to approach Civil Court and as such the bar u/s 3(5) would apply thereby disentitling the claimants to approach the Civil Court. sub-Section (2) of Section 19 excludes the jurisdiction of Civil Court to settle, decide or deal with any question which is by or under Workmen's Compensation Act required to be settled, decided or dealt with by Commissioner and to enforce any liability incurred under said Act. Thus, exclusion of Civil Court's jurisdiction is to the extent of bar created under sub-Section (2) itself and there is no absolute bar for invoking jurisdiction of Civil Court to enforce the claim for tort. Thus, in order to reject a claim or negative a claim made under common law, it must be shown that the person entitled to compensation or his or her legal heirs have already made a claim for compensation under Workmen's Compensation Act by way election of a Forum. Thus, a voluntary deposit made by an employer u/s 8 of Workmen Compensation Act to absolve itself/himself/themselves from any penal consequences flowing on account of its non compliance cannot be termed as claim petition deemed to have been instituted by the legal heirs of the deceased. Yet another factor which requires to be noticed is an unscrupulous employer by paying any paltry sum to a gullible employee cannot contend that claim of a workmen has been satisfied and it is in this background that Section 8 lays down format for deposit of compensation payable by an employer when an employee

meets with an accident. The object being that unscrupulous employer should not be allowed to take undue advantage of the ignorance of an employee by making paltry payment. Even in such circumstances, the right of workmen is not scuttled by virtue of Section 10 of Workmen Compensation Act and workmen or his legal heirs of deceased workmen would be entitled to lodge a claim petition and thereby initiate proceedings by electing the Forum.

25. Now coming back to the facts of the present case, it is noticed that compensation has been deposited by employer in discharge of its obligation under Workmen's Compensation Act, 1923. Thus, crucial question as to whether it would prevent the workmen or his legal heirs from claiming compensation by way of damages by invoking common law right is to be looked into. Thus, employer depositing the amount would not tantamount to filing or instituting a claim by employee or legal heirs of deceased employee and thereby it cannot be held that they have submitted to the jurisdiction of Commissioner for Workmen's Compensation under said Act by choosing the Forum. By reading of proviso to Sub-section (2) of Section 19 it would nowhere throw any light to hold that Commissioner can adjudicate upon the question of personal negligence or willful act of the employer or negligence by some persons for whose act or default, employer would become responsible and grant relief under the W.C. Act. The only issue or question the Commissioner would examine is to consider whether the injury or death occurred to the workmen arose out of and in the course of his employment and to what amount of compensation workmen or his legal heirs would be entitled to. Thus, Civil Court functioning under common law or general law and Commissioner working under Workmen's Compensation Act would operate in a totally different and distinct fields and they do not overlap with each other.

26. Section 3(5) read with Section 19 (2) makes it explicitly clear that if a workmen institutes a suit for damages in a Civil Court he will not be entitled to claim compensation under Workmen's Compensation Act and vice-versa. This prohibition is significant since claims for compensation before Civil Court by a workmen for compensation can be beyond the amount which has been satisfied under Workmen's Compensation Act by proving among other things the extent of not only loss but also the probable future losses. However, amount of compensation that a workmen can claim even when loss of earning capacity is held to be 100% would get restricted to the entries specified in Schedule IV of the Act. Thus, it would emerge that sub-Section (5) of Section 3 puts embargo on the workmen or legal heirs in making two separate claims i.e., one before Commissioner and other before Civil Court and to avoid duplication of the claims sub-Section (5) of Section 3 has been enacted.

27. It would also be required to be noticed that in the instant case, the legal heirs of the deceased had not instituted a claim nor they have approached Commissioner for Workmen's Compensation for adjudication of their claim. It is the employer as observed hereinabove to discharge its legal obligations as

envisaged u/s 8 of the Workmen's Compensation Act had deposited amount calculated as per schedule IV of Workmen's Compensation Act. On notice being issued of such deposit, legal heirs of deceased workmen have sought for payment of the amount. Thus, mere withdrawal of the amount deposited or receipt of money from the Commissioner deposited by an employer in discharge of his statutory obligation it would not indicate or go to show that legal representatives of deceased workmen have chosen a forum which consequently excludes the jurisdiction of Civil Court. At this juncture it would be of relevance to note the following Judgments:

2 Jasuben and Others vs. Gujarat Electricity Board and Another (Supra)

(a) Mere withdrawal of amount suomoto deposited by the employer will not amount to choice of forum.

(b) There is difference between statutory liability and actionable wrong under tort.

3 Managing Director, Karnataka Power Corpn. LTD. vs. Geetha And Others (Supra)

(a) Mere receipt of money does not indicate any election of choice of forum.

(b) Payment received by the claimant should be deducted in amount of compensation.

4 New India Assurance Co. Ltd. vs. Geeta Sinha And Ors. (Supra)

(a) Merely because the claimant had received the amount deposited by employer in discharge of its statutory obligation. The claimant should not be barred from the compensation under M.V. Act.

5 Jasuben Wd/O Devchandbhai Parmar vs. Gujarat Electricity Board (Supra)

(a) Exclusion of jurisdiction of Civil Court will be there only if an application is filed for compensation under the provisions of W.C. Act.

8 Union of India vs. Satyabati and Others (Supra)

(a) A workmen making a claim under W.C. Act has an alternative remedy under fatal accident.

(b) A special statute will not deprive rights arising out of tort under common law.

In these circumstances, it cannot be held that plaintiffs were not entitled to file a suit for damages before Civil Court or it cannot be held that Civil Court had no jurisdiction to entertain the suit.

28. Thus, it emerges in the event of compensation is deposited by an "employer" to absolve his/its liability and notice of such deposit is issued to workmen/legal heir and it would indeed amount to thrusting a Forum on hapless claimant/s who never knew about legal consequences which would flow therefrom. At this juncture it would be of benefit to extract the Judgement of this Court in the case

of M.D. Karnataka Power Corporation vs. Geetha at Paragraph No. 11.

11. In this case, claimants did not initiate and prosecute any remedy under the Workmen's Compensation Act, 1923. Wherever there has an employment injury or death, the employer is required by that law to deposit such amounts as are awardable under the Schedule to that "Act" with the Commissioner within the stipulated time. In depositing the amount, the appellants purported to discharge their statutory obligation under that. If that amount is paid over to the claimants, all that can be said is that such payment should be given deduction to in the compensation awardable in these proceedings. The bar contained in section 110-AA of the Motor Vehicles Act is not attracted, because the claimants have not made any election u/s 110-AA.

29. In view of the above discussion point No. 1 formulated herein above deserves to be answered in the negative i.e., in favour of the respondents and against the appellants.

30. Re:Point No.2 and 3: The Trial Court on appreciation of evidence has found that defendants have not denied the fact about the accident in question namely death occurring due to electrocution. In fact the certificate dated 7-8-2004 issued by Corporation which came to be marked as Ex. P.5 would clearly go to show that defendants 1 to 3 have admitted the deceased Hanumanth Sontannavar suffered injuries in electrocution on 11-3-2004 and succumbed on 14-3-2004 due to the said injuries. The Post Mortem report which came to be marked as Ex. P.4 would go to show death was due to coma, secondary brain injury and Ex. P.10 certificate issued by the Department of Forensic Medicine also reveals that cause of death was due to Coma, Secondary Brain injury as a result of electric shock and fall. The said medical evidence available on record has not been rebutted by the defendants either by denying the same or producing any contra evidence.

31. A perusal of the evidence of D.W.1 would disclose that deceased Hanumanth Sontannavar died due to electric shock while discharging duties. However, it has been pleaded by defendants 1 to 3 that accident occurred on account of the negligence and mischief of defendant Nos 4 and 5 and have relied upon the conviction of defendant Nos 4 and 5 by the Additional JMFC, Gokak in C.C. No. 282/2005 which would also not come to the rescue of the Appellants in view of the Judgment passed in Criminal Appeal No. 174/2006 acquitting Defendant Nos. 4 and 5. Once death is attributed to have occurred in discharge of duties that is due to electrocution the principle of strict liability would apply and at this juncture it would be of relevance to extract the Judgment of this Court in Borawwa W/O Mallappa Guggari & Anr. vs. Kptcl (Supra) whereunder it is held as follows:

16. But if one should apply the law as evolved in the perusal of the decisions cited on behalf of the appellants by their Learned Counsel, particularly in the light of the law laid down by the Supreme Court in Madhya Pradesh Electricity

Board Vs. Shail Kumari and Others, , it becomes obvious that even in terms of the Fatal Accidents Act, 1855 and on the principles of law of strict liability, once the death is attributed to be in the context of the functioning of the first defendant-Board, the principle is attracted and the victim and the dependents will have to be compensated by the first defendant-Board, which is engaged in a hazardous and endangering activity.

Thus, conclusion arrived at by the Trial Court that deceased Sontannavar died due to electrocution in the alleged fatal accident on account of the negligence of the defendants irrespective of the fact as to whether defendants 4 and 5 were responsible for the said fatal accident the principles of strict liability would apply and as such the finding of the Trial Court is based on sound appreciation of evidence which does not call for any interference.

32. Though Mr. Kamate Learned Counsel for the appellants has attempted to make valiant efforts to persuade this Court that compensation awarded by the tribunal is excessive and not commensurate with the established law, I am not inclined to accept the said submission for reason more than one. Admittedly no plea has been raised by the defendants 1 to 3 in the written statement contending that compensation claimed by the plaintiffs either to be excessive or exorbitant. The pleadings laid before the Court of first instance being the foundation upon which the parties would be entitled to develop their case if found to be deficient or unavailable any amount of plead raised in an Appellate Court would be of no avail. At this juncture the Judgment of the Hon''ble Supreme Court in the case of Bhagat Singh and Others vs. Jaswanth Sinth(Supra) would be of relevance which reads as under:

Para:9: The case more to the point is the Privy Council case relied on by the Courts below viz: AIR 1930 57 (Privy Council) , where it was held that "quote where a claim has never made in the defence presented no amount of evidence can be looked into upon a plea which was never put forward.

Thus a plea not raised before the Trial Court cannot be raised for the first time during the hearing of an appeal u/s 96 of CPC. The Trial Court having taken into consideration the salary certificate of the deceased and the service certificate as per Ex. P.6 has quantified the compensation amount payable by applying the multiplier method. The Division Bench of Punjab and Haryana High Court in the case Paramjit Kaur and Others vs. State of Punjab (Supra) has held by relying upon the Judgment of the Hon''ble Supreme Court as under:

19. Having held that this is a clear case of negligence, incompetent workmanship and supervision on the part of the Board and its officials, which has resulted in the untimely and sudden death of Sh. Lajja Ram, we proceed to assess the amount of compensation to which the petitioners would be entitled to in the present case. Since there is nothing in the Acts governing the transmission and supply of Electricity which regulates the grant or quantum of compensation in our considered view the well settled and accepted principles adopted by the Courts

for determination of compensation to be awarded in fatal accident cases under the Motor Vehicles Act, 1988 can be adopted, as the underlying principles for determination of the quantum of compensation are the same.

The said yardstick having been applied by the Trial Court to arrive at the compensation payable to the claimants would also go to show that it does not suffer from any infirmities whatsoever. It is also to be noticed that the Trial Court has taken into consideration the amount in deposit made by the appellants before the Workmen's Compensation Commissioner namely Rs. 3,38,880/- and has given a deduction thereof while arriving at the net compensation payable to the plaintiffs. The said conclusion arrived at by the Trial Court also deserves to be affirmed by answering the same in the affirmative.

33. It would be necessary to place on record the able assistance rendered by Sri. B.S. Kamate and unriddled erudition of facts and law by Sri. Sriharsh Nelopanth as also the assistance rendered by Sri. Ravi. S. Balikai in arriving at the following conclusion.

Re:Point No. 3: In view of the discussion made herein above following order is passed:

ORDER:

(i) Appeal is dismissed with costs.

(ii) Judgement and decree passed in O.S. No. 269/2006 by the Ist Additional Civil Judge (Sr. Dn.) Gokak dated 10-9-2009 is hereby affirmed.

(iii) Registry to draw the decree accordingly.