

(2009) 04 MAD CK 0290

In the Madras High Court

Case No : S.A. No. 327 of 2009 and M.P. No. 1 of 2009

The Superintending Engineer, Tamil Nadu Electricity Board

APPELLANT

Vs

Sundari and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Limitation Act, 1963 — Section 6, 7

Citation : (2009) 6 CTC 487 : (2009) 4 LW 327

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : N. Muthuswami, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal has been filed by the second defendant/ Electricity Board, animadverting upon the judgement and decree dated 13.4.2007 passed by the learned Principal District Judge, Cuddalore, in A.S. No. 67 of 2006, reversing the judgement and decree dated 16.10.2004 passed by the learned Subordinate Judge, Cuddalore, in O.S. No. 138 of 2004. For convenience sake, the parties are referred to here under according to their litigative status before the trial Court.

2. A summation and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of this second appeal, would run thus:

(a) The respondents/plaintiffs filed the suit O.S. No. 67 of 2006 claiming a compensation of Rs. 4,00,000/- concerning the death of the husband of the first plaintiff and father of the plaintiffs 2 to 4, one Somasundaram, due to electrocution, which took place on 23.10.1994, as against which, the second defendant filed the written statement and resisted the suit.

(b) During enquiry, the trial Court framed the relevant issues. The first plaintiff examined herself as P.W.1 along with two others and Exs.A1 to A.3 were marked.

The first defendant examined himself as D.W.1 along with one Arumugam-the Junior Engineer as D.W.2 and Ex.B1 was marked.

(c) Ultimately the trial Court dismissed the suit, as against which, the plaintiffs filed the A.S. No. 67 of 2006. The first appellate Court reversed the trial Court's judgement and awarded a sum of Rs. 4,00,000/- with interest at 9% per annum.

(d) Being disconcerted and aggrieved by the judgement and decree passed by the first appellate Court in A.S. No. 67 of 2006, this second appeal has been focussed by the second defendant on various grounds and also suggesting the following substantial questions of law.

(a) Whether the lower appellate Court is right in applying the doctrine of strict liability and holding the appellant - board also is liable to pay compensation?

(b) Whether the suit is not barred by limitation as per Article 82 of the Limitation Act?

(c) Whether Sections 6 and 7 of the Limitation Act is applicable to the facts of the case?

(d) Whether the appellant/Board is liable to pay compensation for the misuse of the electricity committed by the 5th respondent illegal and without the knowledge of the Tamil Nadu Electricity Board in violation of the terms and conditions of supply of electricity?

(e) Whether the lower appellate Court is right in fixing the monthly income of the deceased of Rs. 3,000/- without any documentary evidence?

(f) Whether the fixing of the lower appellate Court that the appellant-Board is negligent in not preventing the misuse of electricity by the 5th respondent is sustainable in law and facts of this case?. (extracted as such)

3. A bare poring over and perusal of the typed set of papers, including the judgements of both the Courts below, would reveal that the dependants/legal heirs of the deceased Somasundaram, aged about 35 years, who died due to electrocution, filed the suit claiming Rs. 4,00,000/- from D1-the owner of the land, who erected a live wire fencing, so as to protect his land, and also from the the Electricity Board/D2.

4. The trial Court dismissed the suit. Whereas, on appeal by the plaintiffs, the first appellate Court, considered the case and awarded a compensation of Rs. 4,00,000/- holding that both D1 and D2 are jointly and severally liable, as against which, the present second appeal has been filed by D2/Electricity Board, setting out the aforesaid substantial questions of law.

5. The learned Counsel for the appellant/D2 would put forth his argument to the effect that the fault was on Govindasamy/D1, who illegally erected a live wire fencing, which he was not expected to do so and for that the Electricity Board cannot be mulcted with liability.

6. The first appellate Court, considering the case laws on this aspect arrived at the conclusion that the Electricity Board was duty bound to see that D1 should not have maintained such live wire as fence, hence, the Electricity Board also was liable in this case. In paragraph 8 of the first appellate Court's judgement, as many as 5 decisions, including the decision in *Rylands v. Fletcher* 1968 LR (3) HL 330 is found exemplified correctly. The learned District Judge also discussed at length that the Electricity Board cannot wash its hands simply by pointing out that the fault was on D1.

7. It is axiomatic that D1 was not expected to erect fence with live wires. The core question arises as to how the Electricity Board can be made liable for such violation of D1. The appellate Court applied the strict liability theory to the effect that live wire, if found strewn in a place, then naturally the Electricity Board could be mulcted with liability, as the innocent by-passer should not be made to suffer because of the negligent conduct of the Electricity Board officials in allowing such fence made of live wires in existence endangering the innocent passers-by.

8. It is a common or garden principle that the Electricity Board officials are expected to go on rounds and to see as to whether there is any misusing of electricity supply. Here, it is crystal clear that D1 went to the extent of erecting a live wire fencing, of course to protect his field, and if the officials of the Electricity Board had been vigilant enough, certainly they could have found out the same. As such, considering all these facts, the first appellate Court correctly and appropriately decided the issue relating to liability and ultimately held that both D1 and D2 are jointly and severally liable to pay compensation, warranting no interference by this Court. I could see no question of law much less substantial question of law involved in this case.

9. As far as the period of limitation is concerned, the first appellate Court correctly held that even though as per Article 82 of the Limitation Act, within two years from the date of death, the suit should have been filed for compensation, as per Sections 6 and 7 of the Limitation Act, minors can file suit after attaining majority.

10. Here the widow and three minors are the plaintiffs and that too in a compensation case, the Electricity Board is not expected to have a draconian view of the matter. As such, the view taken by the first appellate Court warrants no interference.

11. The institutions like Electricity Board should not plead limitation, so as to deprive the hapless and helpless victims of the accident. In that view of the matter also I could find no fault with the first appellate Court in deciding the limitation point as against the defendants.

12. Regarding awarding of compensation is concerned, the first appellate Court clearly held that the deceased, at the relevant point of time, was aged about 35 years and accordingly, applied the multiplier 16. The monthly income of the

deceased was taken as Rs. 3000/-, as he happened to be a coolie and the same warrants no interference.

13. The awarding of compensation at the rate of Rs. 10,000/- towards loss of love and affection in favour of each of the plaintiffs might seem to be on the higher side. But, no compensation towards loss of consortium to the first plaintiff was awarded. Furthermore, after assessing the compensation in a sum of Rs. 4,24,000/- it was slashed down to Rs. 4,00,000/- as prayed in the plaint. As such, ultimately parity achieved in awarding the compensation. In such a case, no interference with the awarding of compensation by the first appellate Court is required.

14. In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.