

(1987) 06 AP CK 0006
In the Andhra Pradesh High Court

Triveedhi Peerayya

APPELLANT

Vs

Executive Engineer, Dam Division N.S. Dam Vijayapuri North
and Another

RESPONDENT

Date of Decision : 23-06-1987

Acts Referred:

Employees Compensation Act, 1923 — Section 12

Citation : (1988) 2 ACC 443 : (1988) ACJ 572 : (1988) 1 APLJ 585

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Judgement

Jagannadha Rao, J.—This appeal raises a question as to liability under the Law of Torts for death by electrocution. The matter involves the interpretation of Section 12 of the Workmen's Compensation Act as also the General principles relating to negligence of an occupier and his duty towards invitees such as the workmen of the contractor.

2. The accident occurred on 24-4-1978 in which a female worker engaged by the appellant died of electrocution. The husband of the deceased filed an application on behalf of his daughter for grant of compensation under the provisions of Workmen's Compensation Act. He impleaded the Executive Engineer, Dam Division, Vijayapuri North, Nalgonda District as the 1st respondent in the application and the present appellant as the 2nd respondent. He- contended that the accident occurred in the course of the employment while the deceased was watering the cement construction and when She got up a ladder which she did not know, was in contact with a live wire conducting electricity. The deceased was drawing a wage of Rs 169 50 p.m. She was aged 19 years. The total sum claimed was 16.800/-.The appellant filed a counter contending that the accident occurred due to leak-age of electricity and that the Project authority represented by the Executive Engineer was responsible for the accident inasmuch as the said authority was in charge of the supply of electricity and maintenance of all electrical installations and lines in the project. The appellant was only a

contractor for Construction of the entrance to the galleries at blocks 7, 24, 52 and 69 and the appellant had no responsibility with the supply of electricity. The appellant had to engage labour for construction work, day and night, as he was obliged to complete the contract on time. For lighting up the work spot area, the Nagarjunasagar Dam authorities laid the necessary electric poles and lines and was supplying free power to enable the workers to work in three shifts. The deceased was engaged for curing the cement construction of the arch and for watering the wall with a hose pipe and when she set her Foot on the iron ladder supplied by the Project authorities she was electrocuted. The body hung down from the ladder and the legs went up. The Junior Engineer Sri Rajkumar and the Assistant Engineer Sri Bhaskara Rao took steps to put off the power supply, removed the dead body and reported the matter to the Police and labour department. The appellant sent a legal notice on 29-5-1978 to the project authorities seeking to make them liable. The project authority replied on 17-6-1978 contending that the appellant was liable.

3. The Commissioner of Workmen's Compensation, Hyderabad conducted an enquiry. He examined witnesses on both sides and marked several documents and came to the conclusion that the project authority was not responsible for the accident but that the appellant contractor was responsible. He held that the workmen removed certain shutters and put them on the wire which resulted in the damage to the wires conducting the electricity and insulation got removed to an extent of one inch and that the wires came into contact with certain rods which were in touch with the ladder resulting in the accident by electrocution. The Commissioner held that the electric wires lost insulation upto one inch on account of the negligent action of the workmen of the appellant and that it was the duty of the appellant to inform the project authorities that the wooden pole to which the electric wires are connected temporarily had fallen down and that the insulation to the wires had given way and that there was likelihood of some accident. Inasmuch as the appellant had failed to inform the same to the project authorities even though the wooden pole fell down two days earlier, the appellant was guilty of negligence. Accordingly, the project authorities were entitled to deduct the amount of compensation from out of the bills payable to the appellant. In the result no relief was granted to the appellant against the project authorities. It is now not in dispute that so far as the claimant is concerned the amount of compensation has been paid.

4. The only question is whether the deduction made by the employer from the dues payable to the appellant is justifiable or not. That depends mainly on the question as to whether negligence is attributable to the appellant or to the project authorities.

5. The learned Counsel for the appellant, Sri C. Ramachandra Rao raised a preliminary contention u/s 12 of the Workmen's Compensation Act that the statute provided for the liability of the principal viz., the project authorities and that there was no initial liability upon the contractor. The project authorities

would however obtain indemnification from the contractor u/s 12 of the Act if the accident occurred on account of the negligence of the contractor. The project authorities could not straight away deduct the amount from the bills payable to the appellant.

6. No doubt, this submission, in my opinion, is correct. The project authorities, being the principals were primarily liable u/s 12 subject to their seeking reimbursement from the contractor u/s 12. It was not open to them to straight away deduct the compensation amount from the bills payable to the appellant. But inasmuch as the amount has already been paid to the workman after the amounts has been so deducted, I am not interfering in this appeal on that ground. Having regard to the findings arrived at by the Commissioner. I am going into the main question as to whether the principal is entitled to indemnification on the basis of any negligence on the part of the contractor.

7. I have been taken through the evidence of RW 1 the contractor, RW 3 the Electrical Supervisor of the project authorities, RW 4 and RW 5 who are both Assistant Engineers. I have also gone through the reports and notices exchanged between the parties. In the report, Ex. R-8 submitted by the Electrical Supervisor to the Executive Engineer on 28-4-1978 it is stated that the deceased was doing curing work and got up the ladder at the time of accident.

8. Temporarily L.T. three phase power supply was given to the concrete mixer from the main switch fixed on the 20 LBS rail with a bally erected in between for providing adequate clearance. This bally, according to the report, was found intact till 21-4-78 by the Supervisor, Electrical, Right Bank and his staff while attending to the maintenance. It is further noted that the shuttering plates was removed by the contractor's worked on 22-4-1978 and were thrown by the workers of the contractor in a haphazard manner on the bally, due to which the bally along with the cables, fell on the platform. Due to the movement of labourers for curing etc., the insulation tape at the joint might have given away, and the live conductor therefore got into contact with the iron ladder used by the workers for climbing arch through M.S. rounds, M.S. sheets thrown on the platform. The deceased was climbing the ladder for curing the cement construction and got the electric shock through the ladder.

9. The contractor gave evidence as RW 1 and contended that these shuttering plates were removed by the workers ten days before the accident and that in fact they had been placed elsewhere and not as mentioned in the above report. The Commissioner did not accept this version. It is the evidence of the Engineers that the incident took place in the manner mentioned in the above said report of the supervisor dated 28-4-1978.

10. For the purpose of this appeal, I shall assume that the version mentioned in the above report of the Electrical Supervisor is correct. The accident occurred on 24-4-1978 at 4.10 p.m. The bally or the wooden pole which was put up by the department for carrying the wire, was intact on 21-4-1978 and fell on

22-4-1978. In the cross-examination of the Supervisor and the Engineers, it has been elicited that after 21-4-1978 none of the Engineers or the staff had come to the scene to verify whether the bally or the wooden pole temporarily erected was intact and whether everything was going on in order.

11. So far as the contractor is concerned, it is true that his workers interfered with the bally or the wooden pole during the course of their work and the pole fell down on 22-4-1968. But, from between that date and the date of accident the insulation to the electric wire did not get damaged. That happened only on 22-4-1978 by about 4.10 p.m. and the insulation to the wires got fueled in a small portion, resulting in the electricity passing through the rods through the ladder. The question of negligence or otherwise of the contractor or of the department has to be considered on the light of the above facts. As already stated, I am assuming, the narration of facts as mentioned in the report of the Supervisor, ignoring the version of the contractor for the purpose of deciding the question of negligence.

12. If the above facts reveal any negligence on the part of the contractor, the contractor will not be entitled to claim refund of what was deducted from his bills by the Department. If on the other, the negligence is with the department, the contractor will be entitled or payment back of whatever amount has been deducted.

13. The burden of proof, I shall assume it to be on the appellant.

14. The appellant has to establish casual relationship between the accident and the acts of the department. The meaning of the word "cause" has undergone many changes in its meaning over a century. A person becomes liable for the harm complained for, if it is the proximate cost of hit. He may also become liable if his conduct is the direct cause of the harm or the harm is the direct significance of his conduct. Again he becomes liable, if he could have, as a reasonable man, foreseen such harm, or consider it as a probability In other words, the tests are called proximate ness, directness and foreseeability or probability. The test of proximateness or proximity is of long standing. The test of directness has been explained in *Re Polemis* case 1921 (3) KB 562. Scrutton, L.J., observed:

Once that act is negligent, the fact that its exact operation was not foreseen or that the damage it in fact causes is not the exact kind of damage one would except is immaterial, so long as the damage is in fact directly traceable to the negligent act, and not due to the operation of independent causes having no connection with the negligent act, except that they could not avoid its results.

15. The test considered that foreseeability is not a relevant consideration for deciding the casual relation of the negligence to the damage. The test of directness mentioned in *Re Polemis*" case was however subsequently rejected by the Judicial Committee in the *Wagon Mound* case 1961 AC 388. They rejected the test of directness and upheld the test of foreseeability. The principle laid down in

the first Wagon Mound case and the second Wagon Mound case 1967 AC 6117 is that foresee ability must be of such "kind" which a reasonable man could have foreseen. It is not necessary--and it rarely happens--that, the precise damage that occurred is foreseeable, but if that "kind" of damage is foreseeable, the fact that the damage that occurred has been larger in extent or of greater gravity than can be foreseen or expected, will not absolve the defendant from liability. The question is whether the damage is of the same "kind" or one of different kind. Foresee ability is not as fact but an opinion or inference or conclusion if it is deduced from facts. In other words, while proximity and directness are factual tests, the foresee ability test which is based on the opinion expressed by the Court, has come to stay.

16. The fact in *Hughes v. Lord Advocate* 1963 AC 837 explained the principle of "kind" of foresee ability. The defendants' workmen had, during an evening which had become dark, placed red warning lamps around a man-hole in a street in Edinburgh and they had however left the spot unguarded or unfenced. The plaintiff, a boy aged 8, along with another boy, went to the place when the workmen had gone for a little while to take tea. The plaintiff meddled with one of the lamps and it fell into the man-hole, the escape of the paraffin in the lamp and its contact with the flame of the lamp on explosion, the result of which was that the plaintiff fell into the manhole and was severely burnt. The House of Lords held that the defendants were negligent as the damage of the same kind was foreseeable though the very damage may not be foreseeable. It was held that the damage from burns and damage from explosion were of the same kind and the defendants were liable inasmuch as the liability extended to damage of the same "kind". That could have been reasonably foreseen even though, the precise type of damage and the precise type of accident, were not foreseeable. Lord Reid observed:

A defaulter is liable although the damage may be a good deal greater in extent than was foreseeable; he can only escape the liability if the damage can be regarded as doing in kind from what was foreseeable.

17. There are however, two general exceptions to this test of fore-seeability. Firstly, if the damage that occurred was of a kind that was not foreseeable and if the damage was the result of the operation of extraordinary natural such events such an act of God, the defendant would not be liable as in *Blyth v. Bir Mingham Water Works Co.* (1856) 2 Ex. 781. Secondly, if the damage was of a kind that was not foreseeable by the defendant and was due to the intervening of a human agency, the defendant was not liable unless he could have foreseen such intervention. If he could not have foreseen it, it was a new or independent cause or to use a Latin phrase *novus actus interveniens* and he is not liable for the damages due to it. But then the intervening factor must be a kind which could not have been foreseen by the defendants. In *Iron and Steel Holdings and Realisation Agency v. Compensation Appeal Tribunal and Courts* 1966 (1) NBR 480, it was held:

Wherever any intervening factor was itself foreseen or foreseeable by the actor, the person responsible for the act which initiated the chain causes leading to the final result, that intervening cause is not itself in the legal sense, novus actus intervenient breaking the chain of causation and isolating the initial act from the final result.

18. Questions have arisen with regard to antecedent or concurrent or subsequent Intervention of third parties or of involuntary interventions. These questions are inter-related also with the case of the plaintiff's contributory negligence. Even here, several rules have been laid down. The plaintiff fails if his negligence is subsequent to and severable from the defendant's negligence; the plaintiff again fails if his negligence and defendant's negligence are simultaneous. However, the plaintiff will succeed if the defendant's negligence is subsequent to and severable from the plaintiff's. The plaintiff will also succeed if his conduct, though subsequent, not severable but really due to the dangerous situation created by the defendant's negligence.

19. As the Commissioner has held that the contractor was negligent, the question of contributory negligence either of the contractor or his workmen as intervening or severing the chain of causation has also to be considered. It has been pointed out in Winfield and Jolowiz on Torts, Twelfth Edition, 1984 at page 156, under the Chapter "Contributory Negligence" in relation to Workmen, as follows:

It has been suggested that in actions by workmen against their employers for injuries sustained at work the courts are justified in taking a more lenient view of careless conduct on the part of the plaintiff than would otherwise be justified, and that it is not for every risky thing which a workman in a factory may do that he is to be held to have been negligent. Regard must be paid to the dulling of the sense of danger through familiarity, repetition noise, confusion, fatigue and preoccupation with work.

20. Lord Denning, L.J., pointed out in *Challaghan v. Red Kid* 1944 (1) All ER 525 that a worker would be intent on his job, with his eyes up and not down. Lord Denning, L.J., stated in *General Cleaning Contractors v. Christmas* 1952 (1) All ER 42, as follows:

You cannot blame the man for not taking every precaution which prudence would suggest. It is only too easy to be wise after the event. He was doing the work in the way which the employer expected him to do it.

It is, therefore, clear that workmen have to be given considerable latitude on the question of contributory negligence. I am of the view; that the contractor who is equally immersed in the completion of the work has also to be given some latitude in regard to contributory negligence.

21. Thus, the above principles of law fall to be considered in the context of Electrocution --Death in the present case.

22. Electricity has always been considered to be a dangerous object. Persons installing it are expected to foresee all possibilities which might lead to dangers.

23. In *Paine v. Calne Valley Electricity Etc.* 1938 (4) All ER 803 at 809 it was observed that the Engineers who fixed the kiosk did not trouble themselves to see if it was safe for their men to use and they knew better than anyone else could know, the methods which could be adopted and the tools which would be used. Finally they were held guilty of negligence of their duty to their workmen. That was a case of an accident by the use of electricity.

24. In *Hartely v. Mayoh and Co.* 1953 (2) All ER 525 it was observed that neither Mr. Holland nor anyone else in the employment of the first defendant warned the deceased of the unusual danger which existed in these premises for firemen or other persons who might come into contact with the electric wires. This was an unusual danger though the lighting-supply was controlled by a switch which did not appear to a main-switch and electric current could circulate through the electric-circuit when the only two switches which appeared to be main-switches were turned to the "off" position. That was a case in which wiremen received shock on account of the failure of insulation.

25. Again in *Spicer v. Shee* 1946 (1) All ER 489 fire was caused by a defect in the wire. The wire was inadequately protected owing to the negligence of the contractor, and the adjoining premises was destroyed. The Court referred to the nature and scope of determination of electric wires as follows:

It is established beyond all question by the evidence that if an exposed electric wire in circuit comes into contact with, wet or damp wood, current will escape into the wood, char it and may (and, indeed, almost necessarily will) ultimately set on fire. The lead-covering of the cable is to protect the vulcanised rubber and the insulating tape around the wires from deterioration and from injury. Uncovered by the lead, especially if outside a building, the rubber and the tape are exposed to the weather and in a place like this island, are subject to attack by rats.

26. That was a case in which the plaintiff was in the position of an invitee and the defendant was liable on the basis of what he ought to have known, and it was held that the defendant was liable.

27. In *Colling Wood v. H and C Stores* 1932 (3) All ER 200 it was observed:

It is perfectly true that electricity, like gas and water, may be regarded from one point of view as a dangerous thing, and the principle of *Rylands v. Fletcher* (1968) 3 HL 330 has been applied to persons who carry, in their property or in their mains, gas, water or electricity.... In all these cases these dangerous things were being handled in bulk and in large quantities?. These cases undoubtedly come within the principle of *Rayland v. Fletcher*. They seem to me very different in principle and in result from the case of the ordinary domestic pipes for gas or water or for wiring electricity....

28. It was thus seen that in the case of electricity, used for domestic purposes, it

should not be treated as a very dangerous object but that in cases where it is used for non-domestic purposes, such as in the present case, it should be treated as a dangerous thing for which, the principle of strict liability as in *Rylands v. Fletcher* will be applicable.

29. In *Buckland v. Guild Ford Gas Light and Coke Co.* 1949 (1) KB 410 electric wires of high voltage were passing over the top of an easily climbable tree, and the wire were hidden by foliage, and a young girl climbing the tree was electrocuted. It was held that the Electric Company was liable. Morris, J. observed at 418 as follows:

Endeavouring to apply reasonable standards, and not seeking to require any unique gifts of pre-vision. I consider that the defendants ought not to have their high-voltage wires immediately above a tree which could easily be climbed and a tree whose foliage was so dense that the presence of the wires above could not readily be seen....

30. It required no vivid imagination on the part of anyone traversing the route of the wires to appreciate the great peril of having the wires above a tree that could be easily climbed, and whose foliage, being dense in the month of June, would obscure the wires.

31. It was held that it was the duty of Electric Engineers to properly install their wires while electric current is carried and neglect of this duty amounts to actionable negligence.

32. In *Kameswara Rao on Law of Negligence*, 1968, at Chapter XX "Electricity" it is stated "Electricity is also a dangerous thing, and the duty of persons who own and have control over it is strict in terms of the rule in *Ryland v. Fletcher*" 1949 (1) KB 410.

33. That the workmen as well as the contractor in the case are not merely licensees but are in the position of invitees is quite clear. When a person has a contractual right to enter another premises, the Court infers a duty on the defendant to protect the plaintiff from dangerous causes which the defendant ought to have known. A contractor or his workmen engaged in repair of another premises has been held to be in the position of an invitee. 1867 2 CP 311)

34. From the aforesaid principles of law, it is clear that the departmental authorities in the present case were bound to foresee the "kind" of damage or accident which might happen on account of the use of electricity by way of using a detachable-bally or wooden pole for extending the electric wires temporarily to the place of work in this case. The authorities were well aware that a large group of workers were working at the spot and that it was possible that the wooden pole at some stage might easily fall down resulting in any accident. In my view, the very installation of a temporary wooden pole which was likely to be hit by any of the workers during the course of the work, amounted to clear negligence on the part of the authorities. They ought to have put up a metal-pole and got it

firmly fixed in such a manner that it would not have easily fallen down. The very act of putting up a temporarily wooden pole for carrying the electric wires in my opinion, amounts to negligence on the part of the authorities.

35. As stated earlier, electricity is a dangerous thing and in respect of accidents occurring by reason of electricity, the principle laid down in *Rylands v. Fletcher* (supra) regarding strict liability directly applies. This was a case of user of electricity for a non-domestic purpose. On this basis alone, the project authorities must be held liable.

36. Alternatively, the contractor as well as his workmen were in the position of invitees, and the authorities were liable for all the risks which they ought to have known and not merely what they actually knew. Whether we apply the test of foreseeability or foreseeability of the "kind" of danger, the authorities are clearly liable in the present case. It is, no doubt, true that it is an act of the appellant's workmen that resulted in a fall of the pole. As already stated, the authorities could have easily foreseen that the very nature of the work with which the employees of the contractor were concerned, would have resulted in such a situation. That was not beyond their foreseeability. The "kind" of danger was foreseeable. The departmental authorities who had installed the power connection had the responsibility on them to know the dangers arising out of the situation. Though it could not be said that continuous vigilance on the part of the department was necessary, the fact that no inspection was made after 21st of April till 24th when the accident occurred, show that the departmental authorities were not properly inspecting and supervising the spot where there was of the electricity to the employees. I am, therefore, not inclined to agree with the view of the Commissioner that the fault is of the contractor and not of the department. Further there is sufficient gap between the date on which the workmen interfered with the pole on 22nd and the date on which the accident occurred on 24th, and therefore it could not be said that the accident could not have been averted by the authorities if they only foresee that such accident was possible. In those circumstances, the Commissioner erred in throwing the blame on the contractor of his other workmen.

37. For all the aforesaid reasons, I hold that the department was guilty of negligence and that the contractor was not to blame.

38. The deduction of the damages paid to the workmen from out of the bills payable to the contractor, is, therefore, not valid in law. The appeal is accordingly, allowed, and the order passed by the Commissioner is set aside to the extent of permitting the deduction from the bills payable to the contractor.

39. While the claim for compensation of the workmen is upheld, the deduction made by the department officials from the bills to the contractor, is set aside, and the 1st respondent herein is directed to payable to the appellant whatever amount was deducted towards the compensation paid to the workmen in question.

40. The appeal is allowed but in the circumstances without costs.