

(2009) 04 AHC CK 0685
In the Allahabad High Court

U.P.Power Corporation Ltd., Lucknow & others

APPELLANT

Vs

Shivkaliya & others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0685

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra, J.

Heard Sri S.K. Pal learned counsel for the appellant the U.P. Power Corporation Ltd & others. This appeal has been listed under Order 41 Rule 11 CPC today. By an earlier order dated 26.3.2008 of this court the lower court record had been summoned. The lower court record is available. Upon going through the impugned judgements the records and the substantial questions of law framed in the memorandum of appeal it appears that the judgements of the courts below are concluded by findings of fact. Sri Siya Ram Sahu has appeared on behalf of the plaintiff respondents and since the parties are represented this appeal is being finally decided today itself.

The suit was filed by the plaintiff respondents for compensation of Rs. 10 lakhs due to the death of Sri Ganesh who was husband of the plaintiff no. 1 and father of the plaintiff no. 2 to 6 who are minor children. It is alleged that a high tension electric line of 132 K.V. was installed by the Power Corporation over the farming land of the deceased and the electric wire broke and fell on the land of the deceased on 3.12.2000. The official of the Power Corporation came and informed the deceased that the electricity in the broken wire lying over his agricultural land would be cut of. It appears from the record that on 4.12.2000 the deceased Sri Ganesh was electrocuted by the said broken wire which was a line of 132 K.V. high tension electricity line and he died due to electric shock. The Trial Court framed the issue as to whether the deceased had died due to electric shock from the aforesaid electric line and whether the defendant appellant had knowledge

that the live wire has broken and still the electricity is running in it. Evidence was led by the parties and the defendant appellant contested the case on the ground of the amount of compensation as also on the ground that 132 K.V high tension line was being taken out by the deceased for the purpose of theft. The Trial Court disbelieved the case of the defendant appellant with respect to the theory of theft and recorded a categorical finding that on 3.12.2000 information was available with the defendant appellant and the official of the corporation had visited the site on the same day where the high tension line had been broken and informed the people that the electric current will be disconnected. It has found the death occurred on 4.12.2000 and at that time the broken 132 K.V. electric wire was live and electricity was running in it. Upon coming into contact with the broken electric wire Sri Ganesh died due to electric shock. The court also found that it was negligence on part of the employees of the Power Corporation in not disconnecting the electricity supply on the high tension wire although they had knowledge about its being broken on 3.12.2000. The Trial Court considered the question of compensation to the dependants of deceased Sri Ganesh and accepting the case of the U.P. Power Corporation did not allow the claimed compensation of Rs. 10 lakhs but has awarded Rs. 1,39,000 with an adjustment of Rs. 25,000 already given to them on an earlier occasion. It provided that Rs. 10,000 each will be kept in a fixed deposit of a nationalized bank in the name of the five minor children and the balance of Rs. 64,000 will be given to the widow of the deceased Sri Ganesh.

Feeling aggrieved against the judgement and decree of the Trial Court the Power Corporation filed an appeal and the first appellate court has confirmed the finding of the Trial Court and has upheld the finding that the negligence was of the Power Corporation for having not discontinued the electricity in the broken 132 K.V. high tension line lying over the farm land of the deceased Sri Ganesh. The first appellate court has therefore confirmed the finding of the Trial Court upon going through the evidence led by the parties it has held that the death has occurred due to the electric shock received by Ganesh from the broken live wire. It has also found that there was negligence of the officials of the appellant corporation who did not take any preventive action even after having knowledge about the broken live electric wire lying in the field of deceased Sri Ganesh. The oral evidence led by the parties had been thoroughly examined by the first appellate court while confirming the findings of the Trial Court and it has dismissed the appeal holding that the compensation granted to the plaintiff claimants was in accordance with the formula adopted for compensation under the Motor Vehicles Act.

From the concurrent findings of fact and the evidence available on record it is fully established that the high tension 132 K.V. line was installed by the corporation on the agricultural land of the deceased. This high tension electric line broke and one end fell on the land of the deceased. On 3.12.2000 the official of the corporation visited the spot and assumed the deceased that the electricity will be cut off. On 4.12.2000 the deceased came in contact with the live wire and

died due to electric shock as is apparent from the post mortem report. Apparently even on 4.12.2000 the wire was live and electricity had not been cut off even upon an assurance given on 3.12.2000. Negligence of the officials of the corporation is therefore very clear.

In so far as compensation awarded to the claimants is concerned, it has been calculated according to the formula provided under the Motor Vehicles Act. Nothing has been shown by the appellant that the formula adopted is illegal. No other statute has been referred to for fixing compensation to the dependants of the deceased. Therefore the compensation awarded cannot be faulted.

In so far as the substantial question of law framed in the memorandum of appeal are concerned the same relate to appreciation of the oral and documentary evidence led by the parties. The finding of the courts below are concurrent findings of fact and are based on the evidence. Learned counsel for the appellant has not been able to point out any misreading of evidence by the courts below and therefore the substantial question of law framed in the memorandum of appeal are not questions of law for consideration in this appeal being purely questions assailing the findings of fact recorded by the courts below.

The appeal has no merit, it is accordingly dismissed.

No order is passed as to costs.