



2024:CGHC:45252-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on : 08-11-2024

Judgment delivered on : 20-11-2024

FA No. 85 of 2023

1 - Chhattisgarh Rajya Vidhyut Vitaran Company Dwaara Sambhagiya Yantri, Cha, Ga, Ra, Vi, Vi Kan, Bhatapara, Tehsil Bhatapara, District Balodabazar - Bhatapara Chhattisgarh

2 - Chhattisgarh Rajya Mandal Board, Dwaara Shrimaan Adhyaksha, Cha, Ga, Vi, Vi, Mandal Board Danganiya, Raipur, Tehsil Raipur, District Raipur Chhattisgarh

Both Appellants Through Chhattisgarh State Power Distribution Co. Ltd. (Incorporated As Per Section 131 To 134 Of Electricity, Act 2003) Through OIC-EE (O & M) Dn. CSPDCL, Bhatapara, District Baloda Bazar Bhatapara C G N. K. Soni, 58 Yrs, S/o Late R.L. Soni

... Appellants/Defendants No. 1 & 2

versus

1 - State Of Chhattisgarh Through Collector, District Balodabazar - Bhatapara Chhattisgarh (Respondent/defendant No.1)

2 - Lala Ram Yadav S/o Late Radheshyam Yadav Aged About 43 Years

3 - Gopesh Kumar Yadav S/o Lala Ram Yadav Aged About 20 Years

4 - Bhupesh Kumar Yadav S/o Lala Ram Yadav Aged About 18 Years

5 - Kumari Tikeshwari Yadav D/o Lala Ram Yadav (Now Major) Aged About 16 Years

6 - Kumari Brihaspati Yadav D/o Lala Ram Yadav (Now Major) Aged About 14 Years

7 - Kumari Durga Yadav D/o Lala Ram Yadav Aged About 12 Years

8 - Kumari Lakshmi Yadav D/o Lala Ram Yadav Aged About 10 Years

9 - Kumari Santoshi Yadav D/o Lala Ram Yadav Aged About 8 Years

10 - Kumari Sardha Yadav D/o Lala Ram Yadav Aged About 3 Years

Respondent No. 7 to 10 through father respondent No.2 Lala Ram Yadav, 43 years, S/o Late Radheshyam Yadav.

Address of respondents No. 2 to 10 R/o Village and Post Tarenga, Tehsil Bhatapara, District Balodabazar-Bhatapara (CG)

... Respondents/plaintiffs

For Appellants	:	Mr. Raja Sharma, Advocate.
For Respondent No.1	:	Mr. Sachhidanand Yadav, Panel Lawyer.
For Respondents No. 2 to 10	:	Mr. B.L. Sahu, Advocate.

Hon'ble Smt. Justice Rajani Dubey, J

Hon'ble Shri Justice Sanjay Kumar Jaiswal, J

C A V Judgment

Per Rajani Dubey, J

The appellants/defendants No.1 & 2 in this appeal are challenging the legality and validity of the judgment and decree dated 28.2.2023 passed by Additional District Judge, Bhatapara, Distt. Balodabazar-Bhatapara in Civil Suit No.05B/2016 whereby partly allowing the suit of respondents No. 2 to 10/plaintiffs they are held entitled for a total compensation of Rs.10,37,680/- from defendants No. 1 & 2 jointly and severally, with interest @ 9% p.a. from the date of

incident i.e. 13.12.2017 till payment. (*For the sake of convenience, the parties shall hereinafter be referred to as per their description before the trial Court.*)

02. Case of the plaintiffs, in brief, is that plaintiff No.1 is husband of deceased Smt. Pancho Bai Yadav and plaintiffs No. 2 to 9 are their children. As per the plaintiffs, on 13.12.2017 while Smt. Pancho Bai Yadav was bathing at her home, she came in contact with electric current of the bore pump and died due to electrocution. Upon receipt of information from plaintiff No.1 Lalaram regarding death of Smt. Pancho Bai, Police Station-Bhatapara (Gramin) registered mereg intimation and conducted enquiry. From the postmortem report as also the police enquiry report it is clear that she died due to electrocution.

The plaintiffs further averred that the deceased was a labour by profession, earning Rs.200/- per day i.e. Rs.6000/- per month. Due to her untimely death, the plaintiffs have suffered financially and mentally. Hence they sought a total compensation of Rs.11 lacs under various heads with interest @ 18% p.a. and cost of litigation from defendants No. 1 & 2 jointly and severally.

03. Defendants No. 1 & 2 in their written statement denying the adverse averments of the plaint contended that the deceased died due to electrocution as a result of her own negligence. During enquiry by the department after receipt of information regarding her death, it was

found that after taking bath when the deceased went to switch off the starter of water pump, which was fixed on the wall of bathroom she suffered electric shock and died. It was found that the starter was fixed at a place having excessive dampness and there was no earthing connection with the starter. There was also no earthing in the internal wiring of the home. Since the incident occurred due to fault in the internal electric wiring of the home and negligence on the part of the deceased, the plaintiffs are not entitled for any compensation from them.

04. Defendant No. 3 remained ex parte and no written statement was filed by it.

05. Learned trial Court based on the pleadings of the respective parties framed five issues and after appreciation of oral and documentary evidence on record decided all the issues in favour of the plaintiffs and against the defendants and consequently decreed the suit in part by the impugned judgment and decree as mentioned above. Hence this appeal by defendants No. 1 & 2.

06. Learned counsel for the appellants/defendants No. 1 & 2 would submit that it is born out from the undisputed facts of the case that the incident took place due to negligent act of the deceased only. CSPDCL is responsible for maintaining the electric meter and the electric supply and beyond it is the liability of the consumer. There is absolutely no

evidence to prove fault on the part of the appellants/CSPDCL. Learned trial Court has ignored the well settled principles of pleadings and proof particularly relating to admission and passed the impugned judgment and decree without trying and deriving legally sustainable inferences about the fault and liability of the appellants.

Without prejudice to the above, he has submitted that the amount of compensation awarded to the plaintiffs under various heads is exorbitant particularly in absence of any evidence substantiating such claims. There is also no formal proof as to the income and age of the deceased. Learned trial Court applied principles of Motor Accident Claim cases where most of the matters are statutorily prescribed and structured whereas present case being a suit of claim for torts, it ought to have been decided only on proved facts. Therefore, the present appeal deserves to be allowed by setting aside the impugned judgment and decree.

07. Learned counsel for respondent No.1/State has duly assisted the Court.

08. Opposing the contention of the appellants/defendants No. 1 & 2, learned counsel for respondents No.2 to 10/plaintiffs contended that learned trial Court on proper appreciation of oral and documentary evidence on record and considering the notional income of the deceased, her age, dependency etc. has rightly awarded

compensation by the impugned judgment and decree fastening liability, jointly and severally, upon defendants No. 1 & 2, which needs no interference by this Court. As such, the present appeal being meritless is liable to be dismissed.

09. Heard learned counsel for the parties and perused the material available on record.

10. It is clear from the record of learned trial Court that respondents No. 2 to 10/plaintiffs filed a civil suit No.5B/2016 against the appellants/defendants No. 1 & 2 and respondent No.1-State/defendant No.3 for compensation of Rs.11 lacs against death of Smt. Pancho Bai on 13.12.2017 due to electrocution. Learned trial Court on the basis of pleadings of the respective parties framed following issues for adjudication:

"1. क्या दिनांक 13-12-2017 को सुबह 10:00 बजे मृतिका पांचो बाई यादव की ग्राम तरेंगा तहसील भाटापारा जिला बलौदाबाजार - भाटापारा (छ.ग.) को अपने घर में स्नान करने के दौरान बोर पम्प चालू करने से विद्युत करेन्ट लगने से मृत्यु हो गई ?

2 क्या घटना प्रतिवादी क्रमांक 01 एवं 02 छ.ग. राज्य विद्युत वितरण कंपनी भाटापारा के विद्युत व्यवस्था में लापरवाही से हुयी ? यदि हां तो प्रभाव ?

3 क्या घटना मृतिका स्वयं की लापरवाही अथवा आवेदकगण/उपभोक्ता की लापरवाही से घटित हुयी है? यदि हां तो प्रभाव ?

4 क्या वादीगण, प्रतिवादीगण क्रमांक 01 एवं 02 से क्षतिपूर्ति राशि प्राप्त करने के अधिकारी है? यदि हां तो किससे और कितना ?"

11. Before the learned trial Court, the plaintiffs examined Lalaram Yadav (PW-1), Bheem Yadu (PW-2) and defendants No.1 & 2 examined one witness GP Anant (DW-1), Executive Engineer. It is clear from the postmortem report (Ex.P/6) that Pancho Bai died due to electrocution and this fact has not been disputed by the defendants No. 1 & 2. However, they objected to the claim of the plaintiffs on the ground that she died due to electrocution as a result of her own negligence and there was no fault on their part.

12. Learned counsel for the appellants would contend that appellants/defendants No. 1 & 2 are only responsible for outer electrification and after installation of meter, the consumer is responsible for maintenance of the internal wiring and other electrical equipments and as such, for any untoward incident CSPDCL cannot be held liable.

13. DW-1 GP Anant, Executive Engineer in CSPDCL, states in para 5 of his cross-examination that घरों की आंतरिक विद्युत व्यवस्था की वायरिंग की जिम्मेदारी कंपनी का नहीं होता है। (The company is not responsible for the internal electric wiring of the houses.) However, in para 6 he admits that at the time of installation of meter if earthing wiring is not done, it shall be considered negligence of the company.

14. From the overall evidence on record it is seen that defendants No. 1 & 2 have failed to prove any negligence on the part of the deceased or the plaintiffs which led to the unfortunate death of Pancho

Bai. Learned trial Court after due appreciation of the oral and documentary evidence on record gave finding in favour of the plaintiffs on issue Nos. 1 to 3.

15. In the case of ***M.P. Electricity Board v. Shail Kumari and Others, (2002) 2 SCC 162***, the Supreme Court applied the principle of strict liability, which holds that a person or organization engaged in a hazardous activity is liable for any harm caused, regardless of fault or negligence. In para 8 of its judgment, the Hon'ble Supreme Court held as under:

"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

16. Keeping in view the above decision, the admitted facts in this case and the overall evidence on record, as discussed above, this Court finds no illegality or infirmity in the findings recorded by the learned trial court holding that the appellants/defendants No. 1 & 2 liable for paying compensation to respondents No. 2 to 10/plaintiffs against death of Smt. Pancho Bai due to electrocution.

17. As regards the quantum of compensation, learned trial Court considering the fact that though the plaintiffs have claimed that the deceased was earning Rs.6,000/- per month as a labour and PW-1 and PW-2 have also stated so in their evidence but no documentary evidence to this effect has been adduced, assessed her notional income as Rs.4,500/- p.m. Further, looking to her age i.e. 35 years, the number of dependents, keeping in mind the principle of law laid down in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi (2017) 16 SCC 680* and *Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121*, learned trial Court applying the multiplier of 16 assessed total loss of dependency at Rs.9,67,680/- and also awarded Rs.70,000/- towards mental agony & suffering, loss of estate and funeral expenses. As such, the plaintiffs were awarded a total compensation of Rs.10,37,680/-. Considering the nature of job of the deceased, her age, the number of dependents and the aforesaid decisions of the Hon'ble Supreme Court, the amount so awarded by the learned trial Court cannot be termed as excessive or exorbitant

rather it appears to be a just and proper compensation in the given facts and circumstances of the case.

18. On the basis of aforesaid discussions, we are of the opinion that the impugned judgment of learned trial Court suffers from no illegality or infirmity warranting any interference by this Court. The appeal being without any substance is, therefore, dismissed. A decree be drawn up accordingly.

**Sd/
(Rajani Dubey)
Judge**

**Sd/
(Sanjay Kumar Jaiswal)
Judge**