

(2009) 01 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2099 of 2008 and Cross Objection No. 18-C of 2008

Punjab State Electricity Board
and others

APPELLANT

Vs

Maya Devi and others

RESPONDENT

Date of Decision: Jan. 21, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304

Citation: (2009) 5 RCR(Criminal) 816

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Advocate: A.P.S. Mann, for the Appellant; Tribhuwan Singla, for the Respondent

Judgement

Mahesh Grover, J.

The appellants is the Punjab State Electricity Board which has filed the appeal against the judgment of the learned Trial Court dated 21.7.2006 and First Appellate Court dated 5.3.2008.

2. A suit for damages was filed by plaintiffs-respondents alleging that on 31.12.2002 at about 7:00 P.M. Harpal Chand who was proceeding towards Manna Pindi on his motor cycle for the purposes of collecting milk died when he came into contact with live wires. When he did not return home, people went and searched for him and on 1st January, 2003 Jagdish Rai and Jagdish Sharma discovered his dead body on the canal path and milk drums were also lying there. At the spot, electric wires were at a very low level. His hair were also found on the electric wire. It was pleaded by the respondents-plaintiffs that on 31st December, 2002 Raj Singh s/o Gurdev Singh and Jit Singh s/o Gurdial Singh had informed the appellants-Board at its office Dhanaula regarding low levelling and loosening of the live electric wires, but no corrective measures were taken and as a result of which deceased lost his life. An FIR was also lodged at Police Station on the basis of statement of Jagdish Rai u/s 304 IPC.

3. The respondents pleaded that deceased was husband of respondent no.1 and father of the remaining respondents and that he was cultivating 8 kanals of land and also engaged in the business of selling milk at the milk centre and that he was having a total income of 4 lakhs per annum from both the sources. He was aged 45 years and because of his untimely death, the appellants have been deprived of his income and because of the criminal negligence of the appellants, life of the deceased has been cut short.

4. The appellants who are on notice contested the suit and pleaded that they were not negligent. The complaint dated 31st December, 2002 allegedly made by Raj Singh and Jit Singh was denied. Lodging of FIR was also denied. It was pleaded by them that electricity wires crossed the canal minor which were loose because of rain and storm and because of higher level of track of canal minor, the level of electric wires became low. It was further submitted that accident had not taken place because of the electric shock and that taking advantage of the low level of electric wires, the plaintiffs-respondents have concocted a story. The relationship of the deceased with the plaintiffs- respondents was also disputed. It is also disputed that he was earning Rs. 4 lakhs per annum. Lastly, it was pleaded that an inquiry was got conducted in the incident and it was found that one Kaur Singh s/o of Hardial Singh uprooted one "polling string and rod from his field as a result of which electric wires have got loose" and on 1.2.2003 a letter had been written by the Board to SHO, Police Station, Dhanaula. It was then pleaded that deceased was not having registration certificate, insurance cover as well as driving license and violated the motor vehicle rules. Learned Trial Court framed the following issues :-

1. Whether the plaintiffs are entitled to recover the suit amount of damages ? OPP.
2. Whether the plaintiffs have no locus standi to file the present suit ? OPD.
3. Whether the Court has no jurisdiction to try the present suit ? OPD.
4. Whether the plaintiffs have suppressed the material facts from the Court ? OPD.
5. Whether the accident caused due to negligency of PSEB, if so, its effect ? OPP.
6. Relief.

and came to the conclusion that the negligence of the appellants stood established and awarded a compensation of Rs. 10 lacs to the plaintiffsrespondents.

5. In appeal, the findings regarding negligence were affirmed. However, in so far as compensation is concerned, the amount was reduced to Rs. 8,02,000/-.

6. In Regular Second Appeal, the findings of both the Courts below have been assailed while the respondents have filed cross objections praying for enhancement of the compensation.

7. Learned counsel for the appellants contended that Ex. PW 10/A the inquiry report has been completely mis-read by the Courts below to answer the issue of negligence. It is contended that according to this report it has been categorically established that it was Kaur Singh who was negligent in tampering with the pole as a result of which wires become loose and which resulted in the death of the deceased. It was then contended that the complaint itself was made on 31st December, 2002 and the Board could not be expected to rectify it on the same day.

8. Learned counsel for the respondents on the other hand contended that the findings regarding negligence are perfectly in order and prays for enhancement of the compensation.

9. I have heard learned counsel for the parties at some length and perused the impugned judgments. Ex. PW 10/A is the report which according to the learned counsel for the appellants has been mis-read. A perusal of the report does not absolve the appellants of their liability. It has been held in the inquiry report that the height of the minor was higher than the fields of Kaur Singh and that the wires in any eventuality were on a lower level. The appellants have also tried to blow hot and cold in the same breath because in the defence taken up in the written statement they have pleaded that wires become loose on account of storm and rain etc. but in appeal a case has been set up that the incident occurred on account of negligence of Kaur Singh on whose fields wires were installed and death had been caused on account of his tampering with the wires. Kaur Singh has not been examined by the appellants from whose testimony it would have been established as to whether he had tampered with the pole. Merely because the appellants have held so in the inquiry report, will not establish the fact of any tampering with the poles. In any eventuality, the report itself indicates the negligence of the appellants. It has been observed in the report :-

from the receipt of documents received from the relevant office, it goes on to show that construction of 11 KV Harigarh feeder has been made from 66 KV grid Dhanaula over the railway pole, which was earlier 33 KV line. Its span was crossing the canal minor from behind M/s Sangam Godown and in the span earlier to this very there is one angle pole which is installed in the field of Kaur Singh son of Hardial Singh. This angle pole has been balanced by supplier by means of two stretchers. Due to height of canal minor the vertical distance of 11 KV line and because of the span of about 90 meter, was already less. x x x x x x x x but this accident certainly caused due to electric shock and the supplier also admitted the same. It may be mentioned here that concerned Sub Divisional Officer also lodged complaint vide letter no. 12 dated 1.1.2003 at Police Station, Dhanaula against the persons who united the strings meant for maintaining balance of electric poles and matter was being probed by the police. After the accident, the supplier also installed one more PCC in the span crossing the canal minor and distance of the span has been shortened so that such incident may not occur in future.

It is to be noticed from the above report that remedial action was taken after the incident. It has not been denied in the report that the accident has been caused due to the electric shock.

10. In this view of the matter, when the inquiry report is not completely absolving the appellants of their negligence, the findings on this issue by both the Courts below cannot be faulted with. No substantial question of law has been shown to have arisen in the present appeal. Findings returned by both the Courts below cannot be termed to be perverse so as to warrant interference in the Regular Second Appeal. Consequently, the appeal being totally devoid of any merit is hereby dismissed.

11. Lastly, it was contended by the learned counsel for the appellants that compensation awarded is excessive.

12. Deceased was aged 45 years. He was having 8 kanals of land and was also engaged in the business of selling milk. He was survived by his wife and four children, out of whom three are minor. When the deceased died he was away in connection with sale of milk which he was reportedly selling to milk centre. In so far as land is concerned, the family will still be deriving the benefit of income from it. But as far as the sale of milk is concerned, the deceased would at least be earning Rs. 4,000/- per month from it, even, if a conservative estimate is taken. In such like cases, Court is constrained to travel into realm of conjectures to assess compensation on account of loss of human life and income loss is merely one of the aspects which has to be adjudged from the near plausible hypothesis emerging from the facts. Considering the fact that he would at least be earning Rs. 4,000/- per month, the annual income from the sale of milk could be taken as Rs. 50,000/- per annum (approx.) and by applying a multiplier of 16, the compensation would still come to Rs. 8 lacs. The Appellate Court awarded compensation of Rs. 8,02,000/-. So looking at the compensation awarded from any angle, it cannot be termed to be excessive as contended by the learned counsel for the appellants. Broad principle of assessing compensation have been laid down by the Hon"ble Apex Court in case titled as [Lata Wadhwa and Others Vs. State of Bihar and Others](#), where compensation has been assessed in a fire accident. Accordingly, this Court is of the considered opinion that the compensation awarded is just and adequate. Consequently, cross objections are dismissed and the order of the First Appellate Court is upheld.